SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 544

HARRY BERGER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX

	Original	Print
Proceedings in U. S. C. C. A., Second Circuit	1	1
Statement under Rule 13	1	1
Record from D. C. U. S., Eastern New York	3	2
Notice of appeal and order allowing appeal	3	2
Indictment	4	3
Bill of particulars	33	21
Docket entries	37	23
Bill of exceptions	43	27
Appearances	43	27
Motion to sever indictment as to defendant Katz	44	27
Colloquy	44	27
Motions to dismiss	47	29
Testimony of Goldie Goldstein	50	31
Nick Carros	65	42
Frank K. Zimmerman	68	44
Samuel Berger	70	46
Vincent D. Treanor	77	51
John A. Kett	80	53
Morris L. Turoff	89	60
Harry Turoff	92	62
Wm. F. Bergin	96	65
Vitola Piccione	97	66

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 14, 1935.

—5974-C

	Original	Print
Nicholas Piccione	102	71
Jesse Harris	106	74
Edna Napp	115	81
Nat Lewis	119	84
Bernard K. Zimmerman	124	87
Mary Dalton	128	91
Robert L. Godby	130	92
Colloquy	130	92
Testimony of Jack Katz	134	95
Morris Rappaport	225	161
Robert L. Godby (recalled)	226	162
John J. Fitzgerald	275	198
Motions to dismiss	281	202
Testimony of Arnold Gross	285	205
Benjamin Antim	297	213
Richard Epstein	299	214
David Dinnerstein	302	217
Milton Istrick	304	218
William Glatzer	307	220
Julius Gerber	320	230
Harry Berger	324	232
Edward Jones	397	283
Elmer Stahlnecker	450	322
Henry McAleenan	467	333
Charles J. Klauberg	471	336
Vincent Abbott	473	338
Charles E. Muniz, Jr.	477	341
Raymond Demarest	484	345
Philip Aaron	486	347
Ethel B. Mahnken	497	355
George Maschke	498	356
Patrick O'Connor	500	358
Jack Rice	508	362
Herman Wassenberger	540	387
James F. Johnson	548	392
John A. Kett (recalled)	549	393
Robert L. Godby (recalled)	567	406
John E. Simmons	585	418
Motions to dismiss	588	420
Summation on behalf of defendant Berger	590	421
Summation on behalf of Government	614	437
Charge to jury	656	463
Verdict	695	487
Motions to set aside verdict	696	488
Sentence	698	489
Stipulation and order as to exhibits	699	489
Stipulation settling bill of exceptions	702	491
Order setting bill of exceptions	703	491
Assignment of errors	704	491
Amended assignment of errors	706	492
Citation	(omitted in printing)	718

	Original	Print
Order for stay	720	500
Order extending time	722	500
Affidavit as to extension of time	724	501
Stipulation as to extension of time	727	502
Order extending time	728	503
Affidavit as to extension of time	730	503
Stipulation as to extension of time	733	505
Order extending time	734	505
Affidavit as to extension of time	736	506
Stipulation as to extension of time	739	507
Order extending time	740	508
Affidavit as to extension of time	742	509
Affidavit as to extension of time	745	510
Stipulation as to extension of time	747	511
Affidavit as to extension of time	748	512
Stipulation and order as to record	749	512
Clerk's certificate (omitted in printing)	751	
Opinion, Hand, J.	752	513
Judgment	759	517
Clerk's certificate	761	517
Order allowing certiorari	762	519

[fols. a-1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee,

against

HARRY BERGER, Defendant-Appellant

STATEMENT UNDER RULE 13

The within action was commenced by the filing of the indictment on February 27th, 1934. In the indictment Jack Rice, George Lee, Ray Smorgan Katz, Audrey Jean Siegal, alias Audrey Talle, Edward Jones, Angela Joyce Holman and Harry Berger were accused by the United States of America of violations of Secs. 88-263 and 265 of Title 18 of the United States Code. On March 5th, 1934, the various defendants appeared and pleaded "not guilty." The indictment was brought on for trial before Hon. Marcus B. Campbell and a jury on March 19th, 1934. On that day a motion was granted severing the indictment as to the defendant Jack Katz. On March 20th, 1934 the indictment against the defendants Holman, Lee, Siegal and Ray Katz was dismissed; and counts 1-2-3-4-5 and 6 were dismissed as to the defendants Jones and Berger. On March 23rd, [fol. 2] 1934 to whch date the trial was continued, the jury found the defendant Rice guilty on counts 7-8 and 9, and the defendant Jones guilty on counts 7-8 and 9. Prior to the trial the defendants had been arrested and the defendants Berger, Ray Katz and Jones gave bail in the respective total sums of $7000, $4000 and $1000. Only the defendant Berger now appeals. For this purpose he has given bond in the sum of $7500. On March 28, 1934 he had been sentenced to be imprisoned for one year and one day without costs. On the same day the notice of appeal was filed, the appeal allowed, and an order granting a stay of execution filed.

No questions were referred to a commissioner, referee or master. Wegman & Climenko, Esqs. of No. 70 Pine Street, Borough of Manhattan, New York City appeared

for the defendant Berger on the trial. Sydney Rosenthal of No. 10 Court Square, Long Island City, New York has been substituted in their place and stead for this appeal.

[fol. 3] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

against

HARRY BERGER, Defendant

NOTICE OF APPEAL

SIRS:

Please take notice that the defendant, Harry Berger, hereby appeals to the United States Circuit Court of Appeals, for the Second Circuit, from the judgment of conviction of violation of Title 18 of the United States Code, Title 18, Section 88 provided, being the ninth count in the indictment found against this defendant and charging conspiracy to violate Sections 263 and 265 of Title 18 of the United States Code, rendered on the 23rd day of March, 1934, and from each and every part of said judgment.

Dated: Brooklyn, New York, March 28th, 1934.

Yours, etc., Sydney Rosenthal, Attorney for Defendant, Office and Post Office Address, 10 Court Square, Long Island City, Borough of Queens, New York.

[fol. 4] To Hon. Howard W. Ameli, United States Attorney, Eastern District of New York.

To Clerk of the United States Court, Eastern District of New York.

The within appeal is hereby allowed.
March 28, 1934.

Marcus B. Campbell, U. S. D. J.

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

HGS-LG

INDICTMENT

At a stated term of the District Court of the United States of America, for the Eastern District of New York, begun and held in the Borough of Brooklyn, City of New York, within and for the District aforesaid, on the seventh day of February in the year of our Lord one thousand nine hundred and thirty-four, and continued by adjournment to [fol. 5] and including the twenty-seventh day of February, in the year of our Lord one thousand nine hundred and thirty-four.

EASTERN DISTRICT OF NEW YORK, ss:

The Grand Jurors of the United States of America, within and for the district aforesaid on their oaths present that Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigel, alias Audrey Talle, and Jack Katz, hereinafter called the defendants, on or about the 4th day of December, 1933, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York and within the jurisdiction of this Court, did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously utter, publish and pass upon and attempt to utter, publish and pass upon on Vitola Piccione, a falsely made, forged and counterfeited obligation of the United States, to wit; a circulating note of the denomination of $20.00, purporting [fol. 6] to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and simil-tude of a true and genuine obligation of the United States, to wit; a $20.00 Federal Reserve Note issued by the Federal Reserve Bank of Dallas, Texas, and which said falsely made, forged and counterfeited obligation of the United States was and is of the following tenor and effect, that is to say:

20 FEDERAL RESERVE NOTE 20

THE

UNITED STATES OF AMERICA

K23504061A

11 Redeemable in Gold on Demand 11
At the United States Treasury
or in Gold or Lawful Money
At Any Federal Reserve Bank.

K TWENTY

Series of
1928
B

Thesaur Amer
Septent Sigil.

The Federal Reserve
Bank of
11 11 (Picture of Jackson) 11
Dallas
Texas.

K50

Washington, D. C.
Series of 1928B

K23504061A

W. O. Woods — Treasurer of the United States.

A. W. Mellon — Secretary of the Treasury.

Will Pay to the Bearer on Demand
TWENTY DOLLARS

20 20

[fol. 7] On the reverse side:

20 THE UNITED STATES OF AMERICA 20

(Picture of White House)

5

TWENTY DOLLARS

20 20

they the said defendants then and there well knowing the same to be falsely made, forged and counterfeited and intending then and there and thereby to defraud the said Vitola Piccione, and divers other persons whose names are

to the Grand Jurors unknown; against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. (Title 18, United States Code, Sections 263 and 265.)

Second Count

And the grand jurors aforesaid on their oaths aforesaid do further present that Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigel, alias Audrey Talle, and Jack [fol. 8] Katz hereinafter called the defendants, on or about the 4th day of December 1933, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York and within the jurisdiction of this Court, did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously utter, publish and pass upon and attempt to utter, publish and pass upon one Vitola Piccione, a falsely made, forged and counterfeited obligation of the United States, to wit; a circulating note of the denomination of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and similitude of a true and genuine obligation of the United States, to wit; a $20.00 Federal Reserve Note issued by the Federal Reserve Bank of Dallas, Texas, and which said falsely made, forged and counterfeited obligation of the United States was and is of the following tenor and effect, that is to say:

[fol. 9]

20 FEDERAL RESERVE NOTE 20

THE

UNITED STATES OF AMERICA

K23563487A

11 Redeemable in Gold on Demand 11
At the United States Treasury
or in Gold or Lawful Money
At Any Federal Reserve Bank.

TWENTY
Thesaur Amer
Septent Sigil

K Series of
1928
B

K50

The Federal Reserve

Bank of
11
Dallas (Picture of Jackson)
Texas

11 Washington, D. C. 11
Series of 1928B

K23563487A

W. O. Woods A. W. Mellon
Treasurer of the United States. Secretary of the Treasury.

Will Pay to the Bearer on Demand
TWENTY DOLLARS

20 20

On the reverse side:

20 THE UNITED STATES OF AMERICA 20
(Picture of White House)

5

TWENTY DOLLARS

20 20

[fol. 10] they the said defendants then and there well knowing the same to be falsely made, forged and counterfeited

and intending then and there and thereby to defraud the said Vitola Piccione, and divers other persons whose names are to the Grand Jurors unknown; against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. (Title 18, United States Code, Sections 263 and 265.)

Third Count

And the grand jurors aforesaid on their oaths aforesaid do further present that Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigel, alias Audrey Talle, and Jack Katz, hereinafter called the defendants, on or about the 4th day of December, 1933, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York and within the jurisdiction of this Court, did then and there [fol. 11] unlawfully, wilfully, knowingly, fraudulently and feloniously utter, publish and pass upon and attempt to utter, publish and pass upon one Vitola Piccione, a falsely made, forged and counterfeited obligation of the United States, to wit; a circulating note of the denomination of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and there authorized and acting under the laws of the United States, in resemblance and similitude of a true and genuine obligation of the United States, to wit; a $20.00 Federal Reserve Note issued by the Federal Reserve Bank of Dallas, Texas, and which said falsely made, forged and counterfeited obligation of the United States was and is of the following tenor and effect, that is to say:

[fol. 12]

20 FEDERAL RESERVE NOTE 20

THE

UNITED STATES OF AMERICA

K23504064A

11 Redeemable in Gold on Demand 11
At the United States Treasury
or in Gold or Lawful Money
At Any Federal Reserve Bank.

TWENTY
Thesaur Amer
Septent Sigil

K Series of
1928
B

The Federal Reserve
Bank of
11 (Picture of Jackson)
Dallas
Texas K 50

Washington, D. C.
11 Series of 1928B 11

K23504064A

W. O. Woods A. W. Mellon
Treasurer of the United States Secretary of the Treasury.

Will Pay to the Bearer on Demand
TWENTY DOLLARS

20 20

On reverse side:

20 THE UNITED STATES OF AMERICA 20

(Picture of White House)

TWENTY DOLLARS

20 5 20

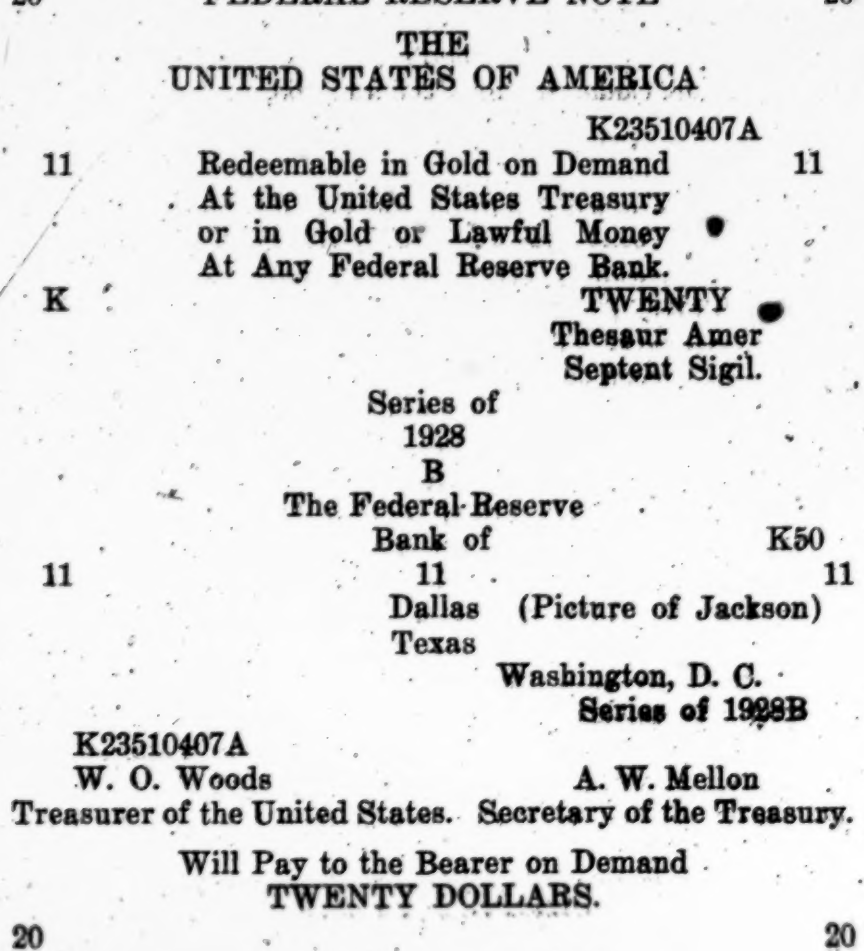
[fol. 13] they the said defendants then and there well knowing the same to be falsely made, forged and counterfeited and intending then and there and thereby to defraud the

said Vitola Piccione, and divers other persons whose names are to the Grand Jurors unknown; against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. (Title 18, United States Code, Sections 263 and 265.)

Fourth Count

And the Grand Jurors aforesaid on their oaths aforesaid do further present that Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigel, alias Audrey Talle, and Jack Katz, hereinafter called the defendants, on or about the 4th day of December, 1933, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New [fol. 14] York and within the jurisdiction of this Court, did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously utter, publish and pass upon and attempt to utter, publish and pass upon one Vitola Piccione, a falsely made, forged and counterfeited obligation of the United States, to wit; a circulating note of the denomination of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and similitude of a true and genuine obligation of the United States, to wit; a $20.00 Federal Reserve Note issued by the Federal Reserve Bank of Dallas, Texas, and which said falsely made, forged and counterfeited obligation of the United States was and is of the following tenor and effect, that is to say:

[fol. 15]



20 FEDERAL RESERVE NOTE 20

THE
UNITED STATES OF AMERICA

K23510407A

11 Redeemable in Gold on Demand 11
At the United States Treasury
or in Gold or Lawful Money
At Any Federal Reserve Bank.

K TWENTY
Thesaur Amer
Septent Sigil.

Series of
1928
B
The Federal Reserve
Bank of K50
11 11 11
Dallas (Picture of Jackson)
Texas

Washington, D. C.
Series of 1928B

K23510407A
W. O. Woods A. W. Mellon
Treasurer of the United States. Secretary of the Treasury.

Will Pay to the Bearer on Demand
TWENTY DOLLARS.

20 20

On the reverse side:

20 THE UNITED STATES OF AMERICA 20
(Picture of White House)

5

TWENTY DOLLARS

20 20

[fol. 16] they the said defendants then and there well knowing the same to be falsely made, forged and counterfeited and intending then and there and thereby to defraud the said Vitola Piccione, and divers other persons whose names are to the Grand Jurors unknown; against the peace and dignity of the United States and contrary to the form of

the statute in such case made and provided. (Title 18, United States Code, Sections 263 and 265.)

Fifth Count

And the Grand Jurors aforesaid on their oaths aforesaid do further present that Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigel, alias Audrey Talle, and Jack Katz, hereinafter called the defendants, on or about the 4th day of December, 1933, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New [fol. 17] York and within the jurisdiction of this Court, did unlawfully, knowingly, fraudulently and feloniously keep in their possession and conceal with intent to pass, publish, utter and sell the same, a certain falsely made, forged and counterfeited obligation of the United States, to wit; a circulating note of the denomination of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of the United States, the said circulating note being in the resemblance and similitude of a true and genuine obligation of the United States, to wit; a Federal Reserve Note of the denomination of $20.00, issued by the said Federal Reserve Bank of Dallas, Texas, and which said falsely made, forged and counterfeited obligation of the United States was and is of the following tenor and effect, that is to say:

[fol. 18]

20 FEDERAL RESERVE NOTE 20

THE

UNITED STATES OF AMERICA

K23504065A

11 Redeemable in Gold on Demand 11
At the United States Treasury
or in Gold or Lawful Money
At Any Federal Reserve Bank.

K TWENTY
Thesaur Amer
Septent Sigil

Series of
1928
B

The Federal Reserve Bank K50
Bank of
11 (Picture of Jackson)
Dallas
Texas

Washington, D. C.

11 Series of 1928B 11
K23504065A

W. O. Woods A. W. Mellon
Treasurer of the United States. Secretary of the Treasury.

Will Pay to the Bearer on Demand
TWENTY DOLLARS

20 20

On the reverse side:

20 THE UNITED STATES OF AMERICA 20

(Picture of White House)

5

TWENTY DOLLARS

20 20

[fol. 19] they the said defendants then and there well knowing the same to be falsely made, forged and counterfeited and intending then and there and thereby to defraud; against the peace and dignity of the United States and

contrary to the form of the statute in such case made and provided. (Title 18, United States Code, Sections 263 and 265.)

Sixth Count

And the Grand Jurors aforesaid on their oaths aforesaid do further present that Jack Rice, Harry Berger, George Lee, Edward Jones, Kay Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigel, alias Audrey Talle, and Jack Katz, hereinafter called the defendants, on or about the 4th day of December, 1933, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York and within the jurisdiction of this Court, did unlawfully, knowingly, fraudulently and feloniously keep in their [fol. 20] possession and conceal with intent to pass, publish, utter and sell the same, a certain falsely made, forged and counterfeited obligation of the United States, to wit; a circulating note of the denomination of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of the United States, the said circulating note being in the resemblance and simil-tude of a true and genuine obligation of the United States, to wit; a Federal Reserve Note of the denomination of $20.00, issued by the said Federal Reserve Bank of Dallas, Texas, and which said falsely made, forged and counterfeited obligation of the United States was and is of the following tenor and effect, that is to say:

[fol. 21]

20 FEDERAL RESERVE NOTE 20

THE
UNITED STATES OF AMERICA

K23504036A

11 Redeemable in Gold on Demand 11
At the United States Treasury
or in Gold or Lawful Money
At Any Federal Reserve Bank.

K TWENTY
Thesaur Amer
Septent Sigil

Series of
1928
B

The Federal Reserve K50
Bank of
11

11 Dallas (Picture of Jackson) 11
Texas

K23504036A Washington, D. C.
Series of 1928B

W. O. Woods A. W. Mellon
Treasurer of the United States. Secretary of the Treasury.

Will Pay to the Bearer on Demand
TWENTY DOLLARS

20 20

On the reverse side:

20 THE UNITED STATES OF AMERICA 20

(Picture of White House)

5

TWENTY DOLLARS

20 20

[fol. 22] they the said defendants then and there well knowing the same to be falsely made, forged and counterfeited and intending then and there and thereby to defraud; against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. (Title 18, United States Code, Sections 263 and 265.)

Seventh Count

And the Grand Jurors aforesaid on their oaths aforesaid do further present that Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigal, alias Audrey Talle, and Jack Katz, hereinafter called the defendants, on or about the 4th day of January, 1934, in the Eastern District of New York and within the jurisdiction of this Court, did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously utter, publish and pass upon and attempt to [fol. 23] utter, publish and pass upon, one Samuel Berger, a falsely made, forged and counterfeited obligation of the United States, to wit; a circulating note of the denomination of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and simil-tude of a true and genuine obligation of the United States, to wit; a $100.00 Federal Reserve Note issued by the Federal Reserve Bank of Chicago, Illinois, and which said falsely made, forged and counterfeited obligation of the United States was and is of the following tenor and effect, that is to say:

[fol. 24]

100 FEDERAL RESERVE NOTE 100

THE

UNITED STATES OF AMERICA

900696531A

Redeemable in Gold on demand
At the United States Treasury,
or in Gold or Lawful Money,
At any Federal Reserve Bank. 100

J Thesaur Amer
Series of 1928A Septent Sigil
7 The Federal Reserve
Bank of
G
Chicago (Picture of Franklin)
Illinois. Series of
1928
A

Washington, D. C.
000696531A J-number not legible
7 W. O. Woods . . A. W. Mellon 7
Treasurer of the United States. Secretary of the Treasury.

100 Will pay to the Bearer on Demand 100
100 ONE HUNDRED DOLLARS 100

On reverse side:

100 THE UNITED STATES OF AMERICA 100

(Picture of Independence Hall)

100 ONE HUNDRED DOLLARS 100

they the said defendants then and there well knowing the same to be falsely made, forged and counterfeited and intending then and there and thereby to defraud the said Samuel Berger, and divers other persons whose names are to the Grand Jurors unknown; against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. (Title 18, United [fol. 25] States Code, Sections 263 and 265.)

Eighth Count

And the Grand Jurors aforesaid on Their Oaths Aforesaid do Further Present That Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigal, alias Audrey Talle, and Jack Katz, hereinafter called the defendants, on or about

the 4th day of January, 1934, in the Eastern District of New York and within the jurisdiction of this Court, did unlawfully, knowingly, fraudulently and feloniously keep in their possession and conceal with intent to pass, publish, utter and sell the same, a certain falsely made, forged and counterfeited obligation of the United States, to wit; a circulating note of the denomination of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois which is a banking association then and thereafter authorized and acting under the laws of the United States, the said circulating note being in the resemblance and simil-tude of a true and genuine obligation of the United States, to wit; a Federal Reserve Note of the denomination [fol. 26] of $100.00, issued by the said Federal Reserve Bank of Chicago, Illinois, and which said falsely made, forged and counterfeited obligation of the United States was and is of the following tenor and effect, that is to say:

100 FEDERAL RESERVE NOTE 100

THE
UNITED STATES OF AMERICA

0006965531A

Redeemable in Gold on demand
At the United States Treasury,
or in Gold or Lawful Money,
At Any Federal Reserve Bank. 100

Series of 1928A Thesaur Amer
J The Federal Reserve Septent Sigil
Bank of
G
Chicago, (Picture of Franklin)
7 Illinois. 7
Series of
1928
Washington, D. C. A
000696531A

J-number not legible
W. O. Woods A. W. Mellon
Treasurer of the United States. Secretary of the Treasury.
7 7

100 Will Pay to the Bearer on Demand 100
100 ONE HUNDRED DOLLARS 100

[fol. 27] On the reverse side:

100 100

THE UNITED STATES OF AMERICA

(Picture of Independence Hall)

ONE HUNDRED DOLLARS

100 100

they the said defendants then and there well knowing the same to be falsely made, forged and counterfeited and intending then and there and thereby to defraud; against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. (Title 18, United States Code, Sections 263 and 265.)

Ninth Count

And the Grand Jurors aforesaid on their oaths aforesaid do further present that Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigel, alias Audrey Talle, and Jack [fol. 28] Katz, hereinafter called the defendants, beginning on or about the 15th day of November, 1933, and continuing up to and including the date of the filing of this indictment, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York and within the jurisdiction of this Court, and in the Borough of Manhattan, City of New York, Southern District of New York, and divers other places to the Grand Jurors unknown, did unlawfully, wilfully, and corruptly combine, conspire, confederate and agree together and with divers other persons whose names are to the Grand Jurors unknown, to commit an offense against the United States, to wit; to violate Title 18, United States Code, Sections 263 and 265, in the following manner, that is to say: the above named defendants did knowingly and wilfully agree together, with intent to defraud, to possess and keep in their possession, and conceal with intent to utter, publish and pass the same, and to utter, publish and pass and attempt to utter, publish and pass, falsely made, forged and counterfeited obligations of the United States, to wit; circulating notes of the denomination of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of

the United States, in the resemblance and simil-tude of true and genuine obligations of the United States, to wit; $20.00 Federal Reserve Notes, issued by the Federal Reserve Bank of Dallas, Texas; and circulating notes of the denomination of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, which is a banking corporation then and thereafter authorized and acting [fol. 29] under the laws of the United States, the said circulating notes being in the resemblance and simil-tude of true and genuine obligations of the United States, to wit; Federal Reserve Notes of the denomination of $100.00, issued by the Federal Reserve Bank of Chicago, Illinois; the said defendants then and there well knowing that the said circulating notes above referred to were falsely made, forged and counterfeited, and intending then and thereby to defraud divers persons to the Grand Jurors unknown; against the peace and dignity of the United States and contrary to the form of the statute in such case made and provided. (Title 18, United States Code, Section 88.)

That in pursuance of said unlawful conspiracy and for the purpose of effecting the object of same the above named defendants did commit the following

Overt Acts

1

In pursuance of said unlawful conspiracy and for the purpose of effecting the object of same, on or about the 4th day of January 1934, in the Eastern District of New York, and within the jurisdiction of this Court, the above named defendants Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigal, alias Audrey Talle, and Jack Katz, did unlawfully pass upon one Samuel Berger, a falsely made, forged [fol. 30] and counterfeited obligation of the United States, to wit; a circulating note of the denomination of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and simil-tude of a true and genuine obligation of the United States, to wit; a $100.00 Federal Reserve Note issued by the Federal Reserve Bank of Chicago, Illinois.

2

In pursuance of said unlawful conspiracy and for the purpose of effecting the object of same, on or about the 4th day of December, 1933, in the Eastern District of New York and within the jurisdiction of this Court, the above named defendants Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigel, alias Audrey Talle, and Jack Katz, did unlawfully pass upon one Vitola Piccione, certain falsely made, forged and counterfeited obligations of the United States, to wit; sixteen (16) circulating notes of the denomination of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and thereafter acting under the laws of the United States, the said circulating notes being in the resemblance and simil-tude of true and genuine obligations of the United States, to wit; Federal Reserve Notes of the denomination of $20.00, issued by the said Federal Reserve Bank of Dallas, Texas.

[fol. 31] 3

In pursuance of said unlawful conspiracy and for the purpose of effecting the object of same, on or about the 31st day of December 1933, in the Southern District of New York, the above named defendants Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigal, alias Audrey Talle, and Jack Katz, did unlawfully pass upon one Bernard K. Zimmerman, six (6) falsely made, forged and counterfeited obligations of the United States, to wit; six circulating notes of the denomination of $100.00, purporting to have been issued by the -ederal Reserve Bank of Chicago, Illinois, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and simil-tude of true and genuine obligations of the United States, to wit; $100.00 Federal Reserve Notes issued by the Federal Reserve Bank of Chicago, Illinois.

4

In pursuance of said unlawful conspiracy and for the purpose of effecting the object of same, on or about the 5th

day of January, 1934, in the Southern District of New York, the above named defendants, Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigel, alias Audrey Talle, and Jack Katz, did unlawfully pass upon one Goldie Goldstein, a falsely made, forged and counterfeited obligation of the [fol. 32] United States to wit; a circulating note of the denomination of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and simil-tude of a true and genuine obligation of the United States, to wit; a $100.00 Federal Reserve Note issued by the Federal Reserve Bank of Chicago, Illinois.

In pursuance of said unlawful conspiracy and for the purpose of effecting the object of same, on or about the 24th day of December 1933, in the Southern District of New York, the above named defendants Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigal, alias Audrey Talle, and Jack Katz, did unlawfully pass upon one Nat Lewis, a falsely made, forged and counterfeit obligation of the United States, to wit; a circulating note of the denomination of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and simil-tude of a true and genuine obligation of the United States, to wit; a $100.00 Federal Reserve Note issued by the Federal Reserve Bank of Chicago, Illinois.

[fol. 33] In United States District Court, Eastern District of New York

[Title omitted]

Bill of Particulars

The plaintiff, for its bill of particulars, alleges:

First: That the counterfeit bills were passed upon Vitola Piccione on December 4th, 1933 at 414 Elton Avenue,

Brooklyn, New York, and that the defendant, Harry Berger, was not personally present when the said bill was passed but that he did aid and abet in the passing of the said bills.

Second. That the counterfeit bill was passed on Samuel Berger on January 4th, 1934 at the Lindy Clothes Shop, 45th Street & Greenpoint Ave. (Bliss Theatre Building), [fol. 34] Woodside, Long Island. That the defendant Harry Berger, was not present when the said bill was passed, but that the said defendant aided and abetted in the passing of the said bill.

Third. That the counterfeit bills were passed upon Bernard K Zimmerman on December 31st, 1933 at 270 Broadway, New York City. That the defendant, Harry Berger, was not present when the said bills were passed but that he aided and abetted in the passing of same.

Fourth. That the counterfeit bill was passed upon Goldie Goldstein on January 4th or January 5th, 1934, between the hours of 10 P. M. on the 4th and 4 A. M. on the 5th of January at the Parisian Dance Hall, 1531 Broadway, New York City. That the said defendant, Harry Berger, was present when the said counterfeit bill was passed and aided and abetted in its passing.

Fifth. That the counterfeit bill was passed at the haberdashery shop operated under the name of Nat Lewis at 1580 Broadway, New York City on or about the 24th day of December, 1933. That the Government does not know the exact date of the passing. That the defendant, Harry Berger, was not present when this bill was passed, but aided and abetted in its passing.

[fol. 35] Sixth. That the counterfeit bills were possessed on December 4th, 1933 at 414 Elton Avenue, Brooklyn, New York; on December 31st, 1933 at 270 Broadway, New York City; on December 20th, 1933 at 853 Seventh Avenue, New York City; on February 1st, 1934, at 350 W. 57th Street, New York City; on December 25th, 1933, at a ladies apparel shop at or near 42nd Street & Sixth Avenue, New York City; on or about December 24th, 1933 at the haberdashery shop of Nat Lewis at 1580 Broadway, New York City; on January 1st, 1934 at 350 W. 57th Street, New York City;

on January 4th or 5th, 1934 at the Parisian Dance Hall, 1531 Broadway, New York City; on January 4th, 1934, at the Lindy Clothes Shop, 45th Street & Greenpoint Avenue, Woodside, Long Island.

Counterfeit bills were also possessed at times between the 1st day of January, 1933 up to February 5th, 1934 at places where the Government cannot at this time state because of the fact that the United States Attorney does not have the information in his possession at this time.

That in each instance, the defendant, Harry Berger, did not personally have the counterfeit bills in his possession, except on the occasions when the bills were passed at 357 W. 57th Street, New York City, and at the Parisian Dance [fol. 36] Hall, 1531 Broadway, New York City, above referred to.

Yours, etc., Howard W. Ameli, United States Attorney, Eastern District of New York, Attorney for Complainant.

To:

Wegman & Climenko, Esqs., 70 Pine Street, New York, N. Y., Attorneys for Defendant Harry Berger.

Clerk of the U. S. District Court, Post Office Building, Brooklyn, N. Y.

[fol. 37] In United States District Court

Docket 35941

The U. S.

vs.

Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Holman, Audrey Jean Siegal, alias Audrey Talle, and Jack Katz

For Defdt.: (Lee) Hogan & Lansey, 331 Madison Ave., N. Y. C.

Title 18, U. S. Code, Secs. 88-263 and 265.

H. Berger, Bond No. 30914, $3,500, Concord Casualty.
H. Berger, Bond No. 30915, $3,500, Concord Casualty.
R. Katz, Bond No. 30918, $2,000, G. Del Vecchio.

R. Katz, Bond No. 30919, $2,000, G. Del Vecchio.
Jones, Bond No. 30930, $1,000, Concord Casualty.
Berger, Appeal, 30940, $7,500, Sadie Wasserberg et al.

Appeal 5-
Paid Clerk 5-

DOCKET ENTRIES

Feb. 27, 1934—Indictment filed.
Feb. 28, 1934—Notice of appearance filed defts. Angelina Joyce Holman and Audrey Jean Siegel.
[fol. 38] Mar. 5, 1934—Notice of appearance filed for deft. Geo. Lee.
Mar. 5, 1934—Notice of appearance filed for deft. Ray Smorgan Katz.
Mar. 5, 1934—Before Inch, J. Defdts. arraigned. Plea not guilty. Bail fixed at $4,000 as to Riec, $3,500 as to Berger, $2,500 each as to Lee and Jack Katz, $1,000 as to Jones, $2,000 each as to R. S. Katz, Holman and Seigal. Defdts. ordered to return Mar. 7, 1934.
Mar. 7, 1934—Before Campbell, J. Defds. present. Case adjd. to and defdts. ordered to return Mar. 19, 1934. Court assigns Joseph Crooks as atty. for defdt. Jones.
March 12, 1934—Order to show cause filed for a bill of particulars.
March 13, 1934—Order to show cause filed for a separate trial, etc.
March 13, 1934—Before Campbell, J. Hearing on order to show cause for a bill of part. Motion argued and submitted.
March 14, 1934—By Campbell, J. Decision rendered granting motion for bill of part. to certain extent (see opinion book).
March 14, 1934—Before Campbell, J. Hearing on order to show cause for a separate trial argued and submitted.
[fol. 39] March 14, 1934—Affidavit in opposition filed.
March 15, 1934—Bill of particulars filed.
March 16, 1934—By Campbell, J. Decision rendered denying motion for separate trial and dissolving stay. Submit Order (see opinion book).
March 16, 1934—By Campbell, J. Order filed and entered denying motion for separate trial and dissolving stay.
March 19, 1934—Campbell, J. Case called. Defdts. present. Trial ordered. Mr. Singer moves to sever indict-

ments as against Jack Katz. Motion granted. Trial adjourned to March 20, 1934.

March 20, 1934—Campbell, J. Case called. Defdts. present. Trial resumed. Mr. O'Neill moves to dismiss indictment against Holman and Seigal. Motion granted. Defdt. Holman and Seigal discharged. Mr. Seigal moves to dismiss indictment as against Ray Katz. Motion granted. Defdt. Ray Katz discharged. Mr. Hogan moves to dismiss indictment as against Lee. Motion granted. Defdt. Lee discharged.

Mr. Wegman moves to dismiss indictment as against Berger. Motion granted as to counts 1-2-3-4-5 and 6 and denied as to counts 7-8 and 9.

Mr. Crooks moves to dismiss indictment as against Jones. Motion granted as to counts 1-2-3-4-5 and 6 and [fol. 40] denied as to counts 7-8 and 9.

Mr. Tamber moves to dismiss indictment as against Price. Motion denied as to each count. Trial adj. to March 21, 1934.

March 21, 1934—Campbell, J. Case called. Defdts. on trial present. Trial resumed. Trial adjd. to March 22, 1934.

March 22, 1934—Campbell, J. Case called. Defdts. present. Trial resumed.

Mar. 23, 1934—By Campbell, J. Order for sustenance filed and entered.

Mar. 23, 1934—Campbell, J. Case called. Defdts. present. Trial resumed. Jury return and render a verdict of not guilty on counts 1-2-3-4-5 and 6 as to defdt. Rice and guilty on counts 7-8 and 9 as to defdt. Rice and not guilty on counts 7 and 8 as to defdt. Berger and guilty on count 9 as to defdt. Berger and guilty on counts 7-8 and 9 as to defdt. Jones. Mr. Tamber moves to set aside verdict as to defdt. Jones. Motion denied. Mr. Wegman moves to set aside verdict as to deft. Berger as to count 9. Motion denied. Defdts. remanded to Mar. 28, 1934 for sentence.

Mar. 26, 1934—Campbell, J. Defdt. Katz arraigned. Plea guilty as to Count No. 9 and sentenced to be imprisoned for 2 years and pay a fine of $100 without costs and stand [fol. 41] committed in a federal penitentiary or prison camp as designated by the Atty. General. Asst. U. S. Atty. Singer moves to nolle prosequi counts 1, 2, 3, 4, 5, 6, 7, 8 and 9. Motion granted. Writ of Commitment issued for defdt. Jack Katz.

Mar. 28, 1934—Before Campbell, J. Defdts. Rice, Berger and Jones present. Defdt. Rice sentenced to be imprisoned for 5 years and to pay a fine of $1 on count 8 and 2 years on count 9 without costs and stand committed and sentence of imprisonment on each of counts 7, 8 and 9 to run concurrently. Defdt. Berger sentenced to be imprisoned for 1 year and 1 day without costs on count 9. Defdt. Jones sentenced to be imprisoned for 3 years and to pay a fine of $1 on count 7 and 3 years and to pay a fine of $1 on count 8 and to be imprisoned for 2 years on count 9 without costs and stand committed and sentence of imprisonment on each counts 7, 8 and 9 to run concurrently. Sentences as to each defdt. to be executed in a penitentiary or prison camp. Writs of commitment issued.

Mar. 28, 1934—Notice of Appeal and order allowing appeal assignments of error and order for stay upon furnishing of $7,500 bond by Defdt. Berger filed.

March 30, 1934—Writ of Commitment for defdt. Jones returned and filed. Writ executed.

[fol. 42] April 9, 1934—Writ of Commitment for defdt. Katz returned and filed. Writ executed.

April 24, 1934—By Campbell, J. Order filed and entered extending time to file record to May 28th, 1934.

May 4, 1934—Writ of commitment for defdt. Rice returned and filed. Writ executed.

May 26, 1934—By Campbell, J. Order filed and entered extending time to file record to June 29, 1934.

June 21, 1934—Notice of motion filed for return of property, etc.

June 25, 1934—Before Byers, J. Hearing on motion for the return of property, etc., adjd. to July 5, 1934.

June 27, 1934—By Campbell, J. Order filed and entered extending time to defdt. Berger to file record to Aug. 6, 1934, etc.

August 1, 1934—By Campbell, J. Order filed and entered extending time to defdt. Berger to file record to August 25, 1934, etc.

[fol. 43] In United States District Court, Eastern District of New York

No. 35941

Before: Hon. Marcus B. Campbell, U. S. D. J., and a Jury

United States of America, Plaintiff,

vs.

Jack Rice, Harry Berger, George Lee, Edward Jones, Ray Smorgan Katz, Angela Joyce Molnar, Audrey Jean Seigal, alias Audrey Talle, and Jack Katz, Defendants

Bill of Exceptions

Brooklyn, N. Y., March 19, 1934.

Appearances

Howard W. Ameli, Esq., United States Attorney for the Government, by Henry Singer, Esq., Assistant United States Attorney.

Morris Kamber, Esq., Attorney for Jack Rice.

[fol. 44] Wegman & Climenko, Esqs., Attorneys for defendant Hary Berger, by Mr. Wegman, of Counsel.

John T. Hogan, Esq., Attorney for George Lee.

Joseph Crooks, Esq., Attorney for Edward Jones.

David Siegel, Esq., Attorney for Ray S. Katz.

Francis O'Neill, Esq., Attorney for Angela Joyce Molnar.

Milton Kroopff, Esq., Attorney for Audrey Jean Seigal.

Joseph H. Wackerman, Esq., Attorney for Jack Katz.

Motion to Sever Indictment

Mr. Singer: The Government moves to sever the indictment as to the defendant Katz and to go to trial as to all other defendants—the male defendant Katz.

The Court: You mean Jack Katz?

Mr. Singer: Jack Katz.

The Court: Motion granted.

Colloquy

Mr. Wackerman: The indictment having been severed against Katz, there is no reason for me to remain, is there, your Honor?

The Court: Not if you have not any advice to give your client, and if you have given it all to him. He would not [fol. 45] be entitled to counsel as a witness.

Mr. Siegel: May I renew my motion for a severance in behalf of Ray Katz?

The Court: You already have made it.

Mr. Siegel: The United States Attorney should state to your Honor whether there will be called on this trial against her her husband.

The Court: I have taken care of that.

Mr. Siegel: Your Honor said you did not know.

The Court: That is correct.

Mr. Siegel: May I ask your Honor to request the United States Attorney to state to the Court as to whether or not this husband will be called as a witness against the defendant Ray Katz?

The Court: I will not allow his testimony to be considered against her.

Mr. Siegel: That is not my request, sir.

The Court: All right. Motion denied, and you have an exception.

(The jury was examined by the Court and declared satisfactory to the defendants.)

Mr. Kroopff: Before the jury is sworn, I understand this indictment does not charge possession of counterfeit money.

The Court: I beg your pardon; if that is wrong, I withdraw it. I thought it did.

Mr. Kroopff: I do not believe it does.

Mr. Singer: Oh, yes, it does, the fifth count is possession, [fol. 46] the sixth count is possession, and so is the seventh.

The Court: Yes, five——

Mr. Singer: 5 and 6, certainly.

The Court: I thought so. I read them over hurriedly.

Mr. Kroopff: Yes, your Honor, I beg your pardon.

Mr. ——: At this time, if your Honor please, Mr. Crooks is not in court. I am not admitted. I have done this out of courtesy.

The Court: You have permission to appear in this case.

Mr. ——: I know nothing at all about it.

The Court: We won't take any testimony. I will let the Government open and will not go on with testimony until Mr. Crooks comes. You are admitted in the State Court?

Mr. ——: Yes.

The Court: I admit you to practice just for this case.

The Jury was sworn.

The Court: I think we might take a recess for a few minutes. Mr. Crooks had to go to court in Mineola, and we will take a brief recess. Do not allow anybody to talk to you about the case, Gentlemen, do not discuss it between yourselves, do not form any opinion until it is finally submitted to you, and we will take a recess for a few minutes.

(At 11:45 A. M. Mr. Crooks appeared and the jury returned.)

[fol. 47] (At 11:50 A. M., Mr. Singer started his opening statement, which was not reported.)

(During Mr. Singer's opening the following occurred.)

Mr. Kamber: I think your Honor is well able to take care of the theory of law and questions of law without the aid of Mr. Singer. Mr. Singer, so far as I understand the law, can state to the jury what he proposes to prove so far as the facts are concerned, and the jurors are the sole judges thereof, but so far as the law is concerned, they have to take it from you, and not from Brother Singer.

(Mr. Singer concluded his opening statement.)

MOTIONS TO DISMISS

Mr. O'Neill: If your Honor please, on the opening of Mr. Singer, I beg to ask the Court for a dismissal of the indictment against my client, the defendant Molnar. Everything that he has said here to connect the defendant Molnar involved, at the extreme interpretation of his words an observation of what was going on. There is no act or statement involving that defendant Molnar with a conspiracy or with any act in connection with this indictment.

The Court: Motion denied, and you have an exception.

Mr. O'Neill: Exception.

Mr. Kroopff: On behalf of the defendant Audrey Seigal, I make the same motion, and direct your Honor's attention to the fact that there has been no bill of particulars presented in this case, and we have not been apprised of any proof that is to be advanced by the Government.

[fol. 48] The Court: Did you demand any?

Mr. Kroopff: No, your Honor. I am bringing this to your attention, that we have nothing except the statement as made by the prosecuting attorney in his opening statement.

The Court: What is the motion?

Mr. Kroopff: The motion is made to dismiss as against the defendant Miss Seigal, and I would like to point out my grounds.

The Court: I do not think you want to argue all this in the presence of the jury. You made your motion. Motion denied and exception.

Mr. Kroopff: Exception.

Mr. Hogan: On behalf of the defendant George Lee, I wish to make the same motion.

The Court: Motion denied, and you have an exception.

Mr. Hogan: Exception.

Mr. Siegal: The motion I have is this: The United States Attorney has said in his opening that he intends to call Katz as a witness, as a Government's witness. His wife is a defendant in this case. Since he would appear as a witness in this case against her, and is indicted with her in the case, his evidence is incompetent under the law.

The Court: I will instruct the jury as to his evidence.

Mr. Seigel: That would be no protection, and be of no service to me, and I ask your Honor at this time for a severance on the ground that this defendant is entitled to her rights, not to have her husband testify against her.

[fol. 49] The Court: He won't.

Mr. Siegel: On the ground she would be deprived of a fair and constitutional trial.

The Court: He won't. Nothing he testifies to can be used against her.

Mr. Siegel: Exception.

The Court: They will have to have other evidence besides his to prove anything against her.

Mr. Siegel: Exception.

The Court: Give an exception to Mr. Siegel.

Mr. Siegel: May we have a ruling here to save a lot of time, that an objection or exception taken by one counsel may inure to the benefit of the others?

The Court: If you agree to that, that is satisfactory to me. All counsel agree on that?

(Counsel agreed.)

The Court: Then any objection made and any exception given will be available to all the defendants, but if there is any special ground of objection on the part of anyone, that should be noted.

[fol. 50] GOLDIE GOLDSTEIN, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

The Court: Now madam, if you will speak loud enough so that the last juryman can hear you.

Q. Will you turn around, please, madam, so we can all hear you?

The Court: Those are the gentlemen who want to hear you, if you will look at them and testify.

Q. Is it Mrs. Goldstein?
A. That is right.
Q. Now, Mrs. Goldstein, in the month of January, this year, did you have a concession in the Parisian Dance Hall at 1531 Broadway, New York?
A. Yes, sir.
Q. What kind of a concession did you have?
A. Soft drinks and sandwiches and coffee and all that sort of stuff.
Q. Did you ever see the defendant Jones in your place at 1531 Broadway, New York?
A. Many a times.
Q. Now, when you say the defendant Jones, will you describe him or point him out from where you are there, please?
A. The light suit.
Q. The man with the gray suit?
A. Yes.

[fol. 51] Mr. Singer: Is there any question about it, counsel,—who represents him?
Mr. Crooks: I do.

Mr. Singer: Is there any question about it? (No response.)

Q. Is that the man?
A. That is the man.

Mr. Singer: Indicating the defendant Jones.

Q. How many times would you say you saw Jones before you had business dealings with him?
A. As a rule he claimed that he came down on a business proposition to me.
Q. Would you say that you saw him ten times?
A. I could not exactly count how many times I seen him.
Q. You are certain that is the man?
A. Yes, sir.
Q. Did he ever have anybody else with him?
A. All the time.
Q. Who was the other man?
A. I really could not describe him, but he never was alone.
Q. Will you come down here, please, madam, and look these men over and see if you can tell me who the other man is here?

Mr. O'Neill: If he is here.
Mr. Singer: Without you, sir.

Q. Will you come down here and look around the court room?

[fol. 52] Mr. Singer: Look over there (indicating).
Mr. Seigel: I object to his pointing where she should look.
The Court: Look around everywhere, madam.

A. I could not describe him, I could not think of him, but I know he always came along with three or four other fellows.
Q. Did you look everybody over in the court room?
A. I did, but I could not really say.
Q. Can you see from here everybody in the court room?
A. Yes.
Q. Will you describe this other man that came there?

Mr. Wegman: I object to that. The witness just stated that there — three or four other men.
The Court: All right; let her describe them all.

Q. You said there was always one that came?

A. He never came with one; he always came with two fellows.

Q. With the same two fellows?

A. No, not the same two men.

Q. Was there one man who always came with him?

A. Yes, a dark complected fellow. He is not here.

Q. Did any of the men who came with him describe themselves and tell you what business they were in?

[fol. 53] Mr. Crooks: I object.

A. They said they would buy my concession.

The Court: Yes.

Q. You never had any talk with any men except when Jones was there?

A. No.

Q. When you talked to the other men you talked when Jones was there?

A. Yes.

Q. What name did Jones give you?

A. The same name.

Q. His own name, Jones?

A. Edward Jones.

Q. Did any of the other men tell you in the presence of Jones what business they were in?

A. No, they did not tell me.

Q. They mentioned nothing about it?

A. Nothing.

Q. Did you have a waiter working for you in the Parisian Dance Hall?

A. Yes, sir.

Q. Is he here in court?

A. Yes.

Q. What is his name?

A. Nick Carros.

Q. Did he see the people?

A. I believe—he worked evenings, but he worked when he saw him.

Q. He saw Jones?

A. Yes, sir.

Q. Did he see the other man?

A. Maybe he did or did not.

Q. Do you remember the evening or morning or January 4th or 5th?

A. I believe it was on a Thursday morning.

Q. After New Year's?

A. About two o'clock in the morning.

[fol. 54] Q. Tell me what happened?

A. He came in——

Q. Who came in?

A. Edward Jones. Then he came alone, and he says, "Well, madam, I am about closing the deal now with you."

The Court: When was this?

The Witness: It was on a Thursday night, I think it was about the 4th.

Q. The 4th of January?

A. I do not remember the date.

Q. It was soon after New Year's?

A. When he came in he said, "Goldie, I am about closing the deal with you." I says to him, "Well, what is on your mind now?" He said, "I want to buy this concession of yours." I told him, "This is the price, take it or leave it, I want $1,500." Then he came along and said, "I will give you $1,200." I said, "No, you will give me $1,500." He was hanging around there the whole night and feeling happy, and about two o'clock in the morning he said, "I think I am going to treat you to a drink." I said, "You do not need to treat me to a drink." He called another girl and bought her a glass of tea or lemonade, I do not remember what it was. He took quite some drinks, and it amounted to $1.70. Then he said he hasn't got any more than two $100 bills.

Q. He said two $100 bills?

A. Yes, sir, he said he had two single bills, but he needs that for taxi. I said for a joke, "Why don't you ride on the subway, pay me the $1.70 out of the two dollar bills, and you can ride by subway, it does not matter, a nickel [fol. 55] will take you home." He said, no, he is used to riding by cab. Finally, I did not have money home—I mean at the place of business—and I took him to my home and changed the $100 bill. When I changed it, I said, "Edward, suppose this bill is no good." He said, "You know where I live." He did give me his address, and I guess

he made a mistake on the street or something, he gave me the right house address, but he did not give me the right address for his home.

Q. You got the right number but the wrong street?

A. The wrong street. I went with Mr. Kett and I did not think a thing like that happened——

Q. You went over with whom?

A. With one of the United States people, I thought I saw him in court.

Q. Agent Kett?

A. And took him to his brother's place.

Q. What did you do with the $100 bill after you got it?

A. I gave it to my waiter the following morning and sent him up to the bank to cash it for me.

Q. Did the waiter come back?

A. He came back there with one of the United States Secret Service men.

Q. Who was that man?

A. He is here in court.

Q. That is Agent Kett?

A. That is the man. He brought him back to me then in the Parisian Dance Hall, I was just moving that time. I said, "It is ridiculous, I know the man"——

[fol. 56] Mr. Crooks: I object to the conversation.

The Court: Strike it out.

Q. Did you put your initials on the bill that time when they brought it back to you?

A. I did.

Q. I show you this bill and I ask you to look at it and see whether that is the bill you placed your initials on?

A. Yes, sir.

Q. Will you show us where your initials are placed?

(Witness indicates.)

Q. It is marked GG?

A. That is right.

Q. On the reverse side of the bill?

A. That is right.

Q. Now, is this the bill you received from Jones?

A. That is the bill I received from Jones.

Mr. Singer: That is offered as Government's Exhibit 1 for identification.

(Marked Government's Exhibit 1 for identification.)

Q. Now, Mrs. Goldstein, you did not get your money back, or good money?

A. Not yet; but he promised.

Q. He promised to give it to you?

A. Yes, sir.

Q. He was up to see you?

A. Once he was to see me.

[fol. 57] Q. And he sent somebody up to see you?

A. No.

Mr. Crooks: I object.

The Court: She said no.

Q. He came up himself?

A. He came himself.

Q. Tell me when he came up.

A. I really do not remember.

Q. How soon after his arrest did he come up?

A. He was bailed, he said, the same day, and he came to see me.

Q. He came right up?

A. Came right up.

Q. What did he say to you when he came to your house?

A. Nothing, except he said, don't be afraid, he will make good the bill if he will ever come out.

Q. Did you ask him where he got the bill?

Mr. Crooks: I object to Mr. Singer leading.

A. I did ask him where he got the bill and told him why he does not tell the truth.

Q. What did he say when you asked him where he got the bill?

A. He told me he was gambling that day and he won it by a certain track. Where he won it, I really do not know.

Q. Betting on horses?

A. That is what he said.

Q. Did he tell you the name of the man he won it from, the first name?

A. I think he mentioned the name Harry.

[fol. 58] Mr. Crooks: I object to what she thinks.

The Court: Sustained.

Q. Did he mention a name?

A. Harry on 43rd Street.

Q. And he said Harry was a bookmaker?

A. Yes, sir.

Q. You know what a bookmaker is, don't you?

A. Well, I know what a bookmaker is.

Q. Now, as a matter of fact, Mrs. Goldstein, what time in the morning did Jones leave your house?

A. About eight in the morning.

Q. What time did he get to your house?

A. After closing.

Q. What time would that be?

A. It was about four o'clock. We went in and had coffee.

Q. And he slept at your house a few hours?

A. He slept in my house until eight o'clock in the morning.

Q. And then you gave him this $90 in cash?

A. No, I gave it to him before.

Q. You gave it to him as soon as you got to your home?

A. Yes, sir.

Q. Did he ever sleep in your house before that time?

A. No.

Q. Had any of these other defendants in this case slept in your house?

A. No.

Q. Now, I show you a photograph, Mrs. Goldstein, and ask you to look at it, please.

A. I believe he was down——

Q. Now wait till I ask you a question. Is that a photograph of one of the men who was with Jones at your Parisian Dance Hall?

A. Yes, I believe it is.

[fol. 59] Q. That is?

A. Yes, sir.

Q. Now will you look around the court room, please, and see if you can pick out the man who was with Jones at the Parisian Dance Hall? Now, come down here, please, and look around.

The Court: Do not direct her now. Look all around the court room, take your time and walk all around, all around the court room.

Mr. Wegman: In order to save time and facilitate the trial, I want the facts to be as they really are, I ask the witness to look at my client, Mr. Berger. I believe that is the man she is looking for.

(The defendant Berger stands up.)

Q. Is that the man?

A. Yes.

Q. What did Berger say to you about his business when he was down there with Jones?

A. I believe nothing.

Q. Didn't he tell you he was a real estate man from Queens?

A. I believe he did. He said he was an attorney of his.

Q. He said he was an attorney for Jones?

A. Yes, sir.

Q. And that he was a real estate lawyer?

A. Yes.

Q. And he came over there to handle your lease?

[fol. 60] Mr. Crooks: I object.

The Court: Let her tell.

A. He said he is too big a man to do business with me, it is up to Edward Jones if he wants to do business with me.

Mr. Singer: That is all. Your witness.

Cross-examination.

By Mr. Crooks:

Q. Are you still in business at this same place?

A. Not just right now.

Q. How long had you been in business there?

A. I had been there two years and nine days.

Q. How long have you known Mr. Jones?

A. About three months.

Q. That is, prior to the time that you changed this bill for him?

A. Yes, sir.

Q. And he had been coming in your place regularly?

A. Evenings, afternoons regularly twice, three times a week.

Q. Was he coming in there on business entirely or for pleasure?

A. That is what he claimed.

Q. How is that?

A. That is what he claimed.

Q. Was he talking about buying your place?

A. All the time.

Q. About how many times did you and he discuss the [fol. 61] matter of your selling your concession to him?

A. He always looked around measuring and gave me estimates.

Q. I say, upon how many different occasions did you and Jones talk about it?

A. I do not know; it was really so many times I do not remember.

Q. You and he became quite well acquainted?

A. As a business matter.

Q. And he used to come in there as a customer?

A. I did not see him as a customer. He used to come straight to my concession, sit down and talk business.

Q. And then on this particular night you say it happened, about two or three o'clock in the morning, he asked you to change the bill?

A. No, he says I should change him, he needs the small change he got for a taxi.

Q. And you did not have the money in the place?

A. No.

Q. And you invited him to go to your home?

A. I took him home.

Q. How far away do you live from the place of business?

A. Just a block away.

Q. When you got there you gave him the change?

A. No, I came back with him to the place and gave him the change in the Parisian Dance Hall.

Q. And then did he subsequently go back home with you?

A. Then he asked us we should go for dinner, me, my waiter, and his wife. He asked me alone. I said, "I will [fol. 62] not go unless I take those people of mine with me." I said, "I am not hungry for a meal."

Q. Did you go out?

A. We went all out. I did not go with him alone.

Q. Who went?

A. I think they are both here, my waiter and his wife, and we had coffee.

Q. With Jones?

A. Yes, sir.

Q. He did not have anyone else with him?

A. No.

Q. Where did you go?

A. To a sort of place on Eighth Avenue.

Q. And how long did you stay there?

A. About half an hour, maybe more, I really cannot tell.

Q. Then you went back to your home?

A. Then we went back and took these people home on 56th Street, and when I came back it was really—it was pouring, and he says he got about an hour or two to rest, he has to go to his place of business. I told him I had a furnished room house upstairs, "If you care to stay upstairs for a couple of hours, it is O. K.," and he went upstairs and he went to bed.

Q. What time did he leave?

A. Eight o'clock in the morning.

Q. Then the next time you saw him after that——

A. I did not see him after that.

Q. After he was arrested?

A. Only when I really wanted to cash this one hundred dollar bill and my waiter got told——

Q. It was after he was arrested you saw him?

[fol. 63] A. Yes; that is all I saw him.

Q. Then he came to see you to talk about the $100 bill, is that correct?

A. That is right.

Cross-examination.

By Mr. Wegman:

Q. Mrs. Goldstein, on this night when Mr. Jones gave you this $100 bill was he at your place at the Parisian Danceland alone?

A. I think I saw him that particular night alone.

Q. There was not anyone with him?

A. I do not remember seeing anyone. I was very busy. I had lots of other people to attend to and did not see nobody.

Q. At the time he bought these drinks and paid for the drinks he was alone?

A. He treated the girls down there with the drinks.

Q. There was not any other man?

A. No, I do not believe I seen anybody with him.

Q. When I had Mr. Berger stand up a few moments ago you recognized him as one of the men that had been at your concession with Mr. Jones, is that right?

A. Yes, sir.

Q. Do you remember now about how many times Berger was there with Mr. Jones?

A. I believe he was once or maybe twice.

Q. Certainly it was not more than twice, was it?

A. I do not think so.

Q. Do you recall that both of those occasions were prior to Christmas?

A. I do not remember when it was.

Q. It certainly was more than a week before this event when Jones gave you the $100 bill, wasn't it?

A. It was before, yes, sir.

[fol. 64] Q. It was quite a while before?

A. Yes, sir; they went into the office, I do not know what they did there, for hours and hours.

The Court: He is not asking that. He asked you how long it was before the night Jones gave you the $100 you saw him.

The Witness: About a week before.

Q. And you never saw him after that until this morning in court, is that right?

A. That is right.

Q. Now, the District Attorney showed you this picture before you were able to remember what Mr. Berger looked like, didn't he?

A. He looked different then than he looks now.

Q. Well, you are very definite in your recollection, aren't you, that it was at least a week before this $100 was passed, that that was the last time you ever saw Berger before you saw him in this court room this morning?

A. Yes.

Redirect examination.

By Mr. Singer:

Q. You could not tell who he was at all until his lawyer asked him to stand up?

A. He was shaved different. I believe he had a mustache.

Q. And you were standing here where I am looking at him, and could not tell him, is that right?

A. No, because he had a mustache then.

(Witness excused.)

[fol. 65] NICK CARROS, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. Your full name, Mr. Carros?
A. Nick Catsimatidis.
Q. You go by the name of Carros because it is easier to say?
A. A short name.
Q. You worked at the Parisian Dance Hall in January of this year?
A. Yes, sir.
Q. Did you see this man Jones, did you ever see him in the Parisian Dance Hall?
A. Yes, sir.
Q. This man Berger, did you ever see him there?
A. Yes, sir.
Q. How often did you see Jones at the Parisian Dance Hall?
A. Several times.
Q. How often did you see Berger there?
A. Maybe once or a couple of times.
Q. Do you remember the morning Mrs. Goldstein gave you a hundred dollar bill and asked you to go to the bank and to cash it or exchange it for other money?
A. Yes, sir.
Q. Now I show you this bill and ask you whether that is the bill you got from Mrs. Goldstein and took to the bank?
A. That is right.
Q. Did you put your name on it?
A. That is right.
Q. And the date?
A. Yes, sir.
Q. What did you write?
A. My name and January 5, 1934.
Q. January 5, 1934?
A. That is right.
[fol. 66] Q. Was that the time when you took the bill to the bank, that same morning, the 5th?

A. Yes, sir.

Q. The same morning you got it from Mrs. Goldstein?

A. That is right.

Mr. Singer: I have shown the witness Government's Exhibit 1 for identification.

Q. You gave this bill to Agent Kett for identification?

A. First I took it to the bank.

Q. I mean after you came from the bank you gave it to Agent Kett of the Secret Service?

A. That is right.

Q. What day of the week was the 5th, do you remember?

A. It was either Thursday or Friday.

Q. Were you at the Parisian Dance Hall the night before you went to the bank?

A. Yes, sir, the lady was moving out, and then I was there to help her move out.

Q. And that night before Mr. Jones was at the Parisian Dance Hall?

A. Yes, sir.

Q. You went out with Mrs. Goldstein and your wife and Jones to have some coffee or some tea?

A. Yes.

Q. Now, that night did you see Berger there?

A. No.

Q. Would you say it was two weeks before that that you saw Berger?

A. Yes, sir.

Q. Would you be able to recognize Berger without him standing up in the court room today?

A. Maybe.

[fol. 67] Q. You saw him stand up before, didn't you?

A. Yes.

Q. That is the man who stood up?

A. I believe he is.

Q. You would not have trouble recognizing him, would you?

A. No.

Q. Did you hear Berger say anything to Mrs. Goldstein when Jones was there about what Berger's business was?

A. No; I was very busy and was not interested.

Q. You took no part in that at all?

A. No.

Q. All you did was to go to the bank and bring the bill back?

A. Yes, sir.

Mr. Singer: That is all.

Cross-examination.

By Mr. Wegman:

Q. Mr. Carros, you recognize Mr. Berger here, do you not?

A. Yes, sir.

Q. And you remember him as he appeared when in the Parisian Danceland before New Year's?

A. Yes, sir.

Q. Did he ever have a moustache, to your recollection?

A. I believe he had.

Q. Are you sure about that?

A. I do not remember exactly.

Q. You do not remember?

A. No, but I remember that is the man.

[fol. 68] Redirect examination.

By Mr. Singer:

Q. Did you get pretty well acquainted with Jones during the number of times he came in the dance hall?

A. I was just like a friend because he was supposed to buy the concession from Goldie Goldstein.

Q. You got well acquainted with him?

A. Not too close; just a friend.

Q. And this particular night you and your wife went to have a bite to eat and coffee?

A. He asked us to go with him.

Q. And you went along?

A. Yes.

(Witness excused.)

Frank K. Zimmerman, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. Mr. Zimmerman, are you a teller at the Chemical Bank & Trust Company, 1501 Broadway, New York?

A. I am.

Q. Were you so employed on the morning of January 5th of this year?

A. I was.

Q. Did you see the witness who just left the stand, Mr. Carros, that morning, the morning of the 5th of January?

A. I did not see the witness.

[fol. 69] Q. Did you see a counterfeit $100 bill that morning?

A. I did.

Q. Who gave that counterfeit $100 bill to you?

A. Why, the man who passed the bill gave it to me.

Q. What man do you mean, Mr. Zimmerman?

A. The only thing I know, I got two or three of them, and I do not know which one it was, but Mr. Carros was not there, I know that.

Q. You did not speak to Mr. Carros that night?

A. I did not know him.

Mr. Singer: I am sorry. That is all.

Mr. Kamber: Are you going to keep him in Court?

Mr. Singer: I am not.

Mr. Kamber: I ask you to keep him here.

Mr. Singer: I ask you to cross-examine him now.

Mr. Kamber: There is nothing to cross-examine him now about.

Mr. Singer: He is an employee in a bank.

The Court: You go ahead and cross-examine him.

Mr. Kamber: There is nothing I am interested in so far as his testimony now goes.

Mr. Singer: I will consent to a motion to strike it out because it is not connected with the case.

Mr. Hogan: On behalf of Lee I move to strike out the [fol. 70] testimony of this witness.

Mr. Singer: I consent to it.

Mr. Kamber: All right; that is all.

The Court: Granted.

(Witness excused.)

SAMUEL BERGER, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. Mr. Berger, do you own the Lindy Clothes Shop at 45th Street and Greenpoint Avenue?

A. I do.

Q. That is located in the Bliss Theatre Building, Woodside, Long Island?

A. That is right.

Q. And did you own that place on January 4, 1934?

A. I did.

The Court: What kind of a shop?

Mr. Singer: It is a clothes shop.

Q. Selling men's clothing?

A. Men's outfitting, yes, sir.

Q. On January 4th of this year, or about that time, did you see this man Jones in your place of business?

A. I did.

Q. What day did he come there, do you know the day?

A. Thursday.

Q. Right after New Year's?

A. Yes, sir.

[fol. 71] Q. January 4th, is that correct?

A. That is right.

Q. What time of the day did Jones come in?

A. About 2:30.

Q. What did Jones say to you?

A. Jones said he wanted to buy a suit.

Q. What did you say? Tell us everything that happened?

A. I showed him various suits. After a little choosing and picking he chose one, had the tailor measure him. He said he would either be back for the suit as six o'clock, or else we should deliver it as seven.

Q. Now, what color suit did he choose?

A. A gray plaid.

Q. That is the suit he is wearing now?

A. No, sir.

Q. A different suit?

A. A different suit.

Q. Did Jones come back?

A. I left for Rockaway and my man told me Jones came back for the suit.

The Court: Never mind what your man told you.

Q. Before Jones left did he pay you for the suit?

A. Yes, sir.

Q. How much did he pay you?

A. He gave me a one hundred dollar bill.

Q. How much was the suit?

A. $25.

Q. Did you give Jones the change?

A. I gave Jones $75.

Q. Of your own—the store's money?

A. No, I did not give him the store's money. I gave him money that was in my possession.

[fol. 72] Q. What did you do with the $100 bill after you got it?

A. Put it in my drawer and the next morning I had to make payment to the treasurer of an organization to which I belong for various moneys I had collected for tickets for a charitable theatre party we were running. I had used part of that money as change. January 5th is rather a slow part of our year, and 2:30 in the afternoon——

Q. What did you do?

A. I took the money, gave change from that money, and therefore the next morning I took this money in to Mr. Turoff.

Q. How many one hundred dollar bills did you take in?

A. One.

Q. Just this one hundred dollar bill from Jones?

A. Yes, sir.

Q. And the one hundred dollar bill you gave to Mr. Turoff the next morning, was that the same one hundred dollar bill you got from Jones?

A. Yes, sir.

Q. No question about that at all?

A. No.

Q. Did you see the one hundred dollar bill again later?

A. The next time I saw the one hundred dollar bill was when it was brought to me to be signed by Agent Kett, to identify it.

Q. And did you sign the bill?

A. Yes, sir.

Q. I show you this bill and ask you to point out the place where you signed it?

A. Right here, sir. (Indicating.)

Q. Is there a date on there when you signed it?

A. I did not sign it as of the date I signed it; I signed it as of the date I received it.

Q. What date did you sign it?

A. Monday.

[fol. 73] Q. If Thursday was the 4th, that would be the 8th?

A. Yes.

Mr. Singer: That is offered for identification as Government's Exhibit 2.

(Marked Government's Exhibit 2 for identification.)

Q. Now tell me, did you see the defendant after the bill was passed?

A. Yes, sir.

Q. You have gotten your money back?

A. Yes, sir.

Q. Did you get your suit back?

A. Yes, sir.

Q. When did you see the defendant?

A. I saw him Saturday night.

Q. Before you got the bill back?

A. Oh, yes, sir.

Q. Say that again?

A. I saw the man Saturday night.

Q. Which Saturday night?

A. Thursday he had given me the bill; Friday I had given it to Mr. Turoff and found out it was counterfeit.

Q. Friday you found out it was counterfeit?

A. That is right.

Q. And Saturday he came back?

A. No, sir.

Q. You went looking for him?

A. I went looking for him Friday when I found out the bill was counterfeit, and could not find him at the address he had stated.

Q. It was the wrong address?

A. It was two numbers away from where he actually lived.

Q. It was the wrong address?

A. Yes.

[fol. 74] Q. And Saturday you found where he actually did live?

A. No, sir.

Q. What happened?

A. I walked into a tea room on the opposite corner from my place of business, and as I got up and was ready to pay my check, I saw Mr. Jones sitting at the bar.

Q. Tell me everything that was said at that time?

A. Before I ever spoke to Mr. Jones?

Q. No.

Mr. Crooks: I suggest he go ahead.

A. Before I spoke to Mr. Jones I was very, very sure this was the man who had bought the suit of clothes from me and had given me the $100 bill. I went outside and called up Police Headquarters, sent over my man, and told him to keep his eyes set in that position at the door, and a little later, feeling the policemen would be due there then, I went over and spoke to Jones. I was happy to see he had that particular suit on. I said, "How are you, Mr. Jones?" He said, "Fine." I said, "How do you like the suit?" He said, "Very much." That was a relief to me, since that meant that was the suit and that was the man. I said, "You know you gave me a one hundred dollar bill for that suit." He said, "Yes." I said, "Do you know who gave you that one hundred dollar bill?" He said, "Yes, I do." I said, "I can advise you the one hundred dollar bill is counterfeit, I have a receipt for the one hun-[fol. 75] dred dollar bill, and if you really can get the party who gave it to you to make good, I would appreciate you doing so, and make good to me, and that will end the matter then and there." He said, "I will take care of it Monday." I said, "Mr. Jones, I cannot very well afford to lose one hundred dollars. I would like it to be made good now." By the time I mentioned the one hundred dollar bill the officers were in front of the door of this bar or tea room. I beckoned them in. They came in and questioned Mr. Jones.

Q. Now, you say you saw him the next night?

A. No, this was Saturday night.

Q. You did not get your money that night?
A. No, sir.
Q. When did you get your money?
A. Monday morning.
Q. Who brought it to you?
A. I do not know. A suit of clothes, the money and an envelope and letter of apology from his wife was left in my store Monday morning.
Q. And that is the last you have seen of Jones?
A. No, I have seen him pass my store since.
Q. Has he been in to see you or to talk to you?
A. No.
Q. Is Mr. Turoff in court now?
A. No.
Q. Is there any doubt in your mind Government's Exhibit 2 for identification, the last bill you looked at, is the same bill you got from Jones?
A. No doubt.
Q. That is the same bill?
A. Absolutely.

[fol. 76] Cross-examination.

By Mr. Crooks:

Q. How long have you known Mr. Jones?
A. I do not know him, sir.
Q. Had he ever been in your store before?
A. Whether he had been in the store or not is not for me to say. He was a familiar face around town.
Q. You had seen him around town?
A. I would not say I had seen him. We see so many people, we pick some as familiar.
Q. His face was familiar?
A. Yes, sir.
Q. Did he live in the same neighborhood as the store?
A. I do not know. The address he gave me that day indicated he did.
Q. How far away?
A. The address indicated two and a half blocks.
Q. So you say the address he gave you was two doors removed from where he lived?
A. That I found out Saturday night.

Q. Anyway, he only lived a couple of blocks from your place?

A. That is right.

Q. Who did you say you gave the $100 bill to?

A. Mr. Turoff, the treasurer of the organization to which we belong.

Q. Where is he?

A. On the same block I am.

Q. You gave that to him when?

A. Friday morning.

Q. About what time was it?

A. 10:30.

Q. Then when was it you saw the bill again after that?

A. Monday.

Q. The following Monday?

A. Yes, sir.

Q. And Mr. Turoff came back with the $100 bill?

A. No; Mr. Turoff's son came back about one hour later [fol. 77] and said that he had a receipt for the one hundred dollar bill, that it was counterfeit. I immediately made out a check for $100 to the account of the organization, not wanting the organization to suffer in any way for the one hundred dollar bill.

Q. And later on you got back your money?

A. Yes.

(Witness excused.)

The Court: We will take a recess until two o'clock. Gentlemen, do not let anybody talk to you about the case, do not discuss it between yourselves, do not form any opinion until it is finally submitted to you.

Met pursuant to adjournment at 2 P. M.; present same as before.

VINCENT D. TREANOR, (Shield 673), 108th Squad, New York City Police Department), called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. Are you connected with the 108th Squad of the New York City Police Department, located in Long Island City?

A. I am.

Q. Were you so connected in the early part of January [fol. 78] of this year?

A. I was.

Q. On or about January 5th did you take into custody a man named Edward Jones?

A. No, I did not. It was January 6th.

Q. Do you know what day of the week that was?

A. Saturday night about eleven o'clock.

Q. Was he taken into custody at or near the store of the witness Samuel S. Berger, near 45th Street and Greenpoint Avenue, Woodside?

A. He was.

Q. Now, at that time did you go to the home of Jones?

A. I did.

Q. And did he change his clothes at home and did you bring the suit back to the store of Mr. Berger?

A. He changed his suit at his home. I returned with Jones and the suit of clothes to the station house, where they were subsequently turned over to Mr. Berger, the complainant in this case.

Mr. Wegman: May I ask the witness to speak louder?

A. (Continuing) I went with the defendant Jones to his home at No. (witness refers to a paper) 4825 45th Street.

Q. Is that in Woodside too?

A. Yes.

Q. In Queens?

A. Queens County.

Q. Is that where the store of this witness Berger is as well?

A. About three blocks from where his store is.

Q. Tell me what happened at Berger's house.

A. I said to him, "Is this the suit of clothes"——

Q. Pardon me, I said Berger. I meant Jones.

[fol. 79] A. I said to Jones, "Is this the suit of clothes that you obtained from Mr. Berger last Thursday?" He said, "Yes." I said, "Mr. Berger tells me that you gave

him a one hundred dollar bill in exchange for this suit and $75 in United States currency." He said, "That is right." I said, "Do you know that bill was a counterfeit?" He says, "Well, Mr. Berger has informed me of such." I said, "Where did you get it from?" He said, "I got it off a bookmaker around Broadway and 43rd Street." I said, "Do you know this bookmaker, could you bring me to him, or locate him anywhere?" He said, "I do not think so. I saw him the other night, and I asked him was that one hundred dollar bill he gave me good, and he said yes it was." I then, with his consent, searched his home, but found no other evidence. I then asked him to turn his pockets inside out.

Q. That is, you found no counterfeit money?

A. No counterfeit money. I then asked him to turn his pockets inside out, which he did.

Q. You searched him?

A. Yes, sir.

Q. And you found no counterfeit money on him?

A. No. On the inside pocket of his small coat I observed a card, a form used by the United States Secret Service. On this card was the name Agent Kett. I said, "What are you doing with this card?" He said, "Agent Kett told me to call him up." I said, "About what?" He said, about another one hundred dollar bill that I had passed last week also. I said, "Where did you get this from?" He said, "From the same man." I then brought Jones and the suit of clothes to the station house, where he was [fol. 80] booked and subsequently turned over to Agent Kett.

Q. How much money in cash did he have?

A. He had about $15 or $20 on him.

Q. And you brought him to the station house and turned him over to Agent Kett of the Secret Service?

A. Yes, sir.

Q. That is all you know about the matter?

A. That is all.

(Witness excused.)

JOHN A. KETT, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. Mr. Kett, you are an operative of the United States Secret Service?

A. I am.

Q. And you were such on January 4th of this year?

A. I was.

Q. How many years have you been connected with the Secret Service?

A. About ten years.

Q. Now, on the 5th of January, 1934, did you see the defendant, Edward Jones?

A. I did.

Q. Where did you first meet him?

A. At his home.

Q. Do you know the address?

A. 4825 45th Street.

Q. Now, at that time when you first saw the defendant Jones, did you have with you this bill, Government's Exhibit [fol. 81] 1 for identification?

A. I did.

Q. And at that time did that bill, Government's Exhibit 1 for identification, have written upon it on the reverse side of the bill, the name of this man Catsimatidis, or whatever it is, and the initials of the witness Goldie Goldstein?

A. It did.

Q. Did you show that bill to the defendant Jones?

A. I did.

Q. And did he subsequently place his initials on the bill?

A. He did. He wrote his name.

Q. Will you describe where it is?

A. On the face of the bill, written in in handwriting, "Edward Jones, January 5, 1934."

Q. Is that the time he wrote on that bill?

A. He did.

Q. Did you put your initials on there?

A. I did, "J. A. K. 1-5-33."

Q. J. A. K.—you wrote 1933 on there?

A. It should be 1934. It is a mistake.

Q. You wrote 1933 on the bill?

A. By mistake.

Q. Did you talk to this defendant Jones about this bill, Government's Exhibit 1 for identification?

A. I did.

Q. Did he make a statement in writing about that bill?

A. Not in writing.

Q. On the 5th of January he made an oral statement to you?

A. He did.

Q. Tell me everything he said and everything you said and everything said in his presence when you questioned him about this bill?

A. I asked him was he in Mrs. Goldstein's place of [fol. 82] business, the Parisian Dance Hall, early that morning.

The Court: Speak up so they can all hear you.

A. He said he was, or had been. I asked him had he given her a $100 bill, and he said he had. I then showed him this bill that I just had in my hand.

Q. Speaking of Government's Exhibit 1 for identification. Go ahead.

A. (Continuing.) And asked him if that was the bill he had given her and he said it was. I then asked him to put his name on it, which he did. I then asked him where he had gotten that bill and he said he had received it the previous afternoon, Thursday, January 4th, from a bookmaker near Gray's Drug Store on 43rd Street and Broadway, New York City. I asked him under what circumstances he received it. He said that he had been playing the horses with this bookmaker every afternoon for about the two previous weeks, preceding weeks, and that he had made some bets totaling about $40, early Thursday afternoon, and later in the afternoon had contacted with this bookmaker named Harry and had received from him winnings totaling $142. I asked him in what shape he received this money. He said he had received the $100 bill that I had in my hand then, the counterfeit, and $42 in bills of various denominations, tens, fives and singles. For the purpose of veracity I asked him the names of some of the [fol. 83] horses he played, what races, and the tracks they ran at. He gave me so many horses and so many tracks, and being unable to say just what amount he won on each horse, or what position the horse ran in, I could not very

well verify it at that time. I then asked him what address he had given Mrs. Goldstein as his home address when leaving her that morning, and he stated that he had given her his correct address. I told him that she had told me the address he had given her was 4825 Queens Boulevard. He denied giving her that address, he claims he gave her his true address. I asked him what the bookmaker's true name was, and where he lives. He said that the only name he knew this man by was by the name of Harry, and he was unable to state where he lived. I then asked him to describe this bookmaker. I have my original notes in my pocket; may I read them?

Q. Yes, if you want to refresh your recollection you may look at them.

A. These are the notes that were made right at the time. He described Harry as an Italian or a Greek, American-born, 37 or 38 years of age, 5 feet 6, muscular build, weighing 160 pounds, broad-shouldered, dark complexion, black hair, clean shaven, fairly nice looking man, good features, and heavy eyebrows.

Q. Did you have any other conversation with him at that time?

A. I did.

Q. Continue, please?

A. I distinctly recall that he took the whole interrogation on my part as a sort——

[fol. 84] Mr. Crooks: I object to the characterization.

The Court: Yes, strike that out.

A. I said it was no laughing matter, it was a serious proposition, and that any answers he did make I wanted the truth, I asked him did he get any other money from this Harry on Thursday afternoon outside of the $142 and he insisted no. I also asked him at that time whether he had passed any other $100 bills, good or bad, prior to the time that I was talking to him, and he insisted that he had not, outside of the time when he bought the concession at the soda store on Queens Boulevard, quite a few months prior to that, and he stated in that transaction several $100 bills were passed, but he thought they were good also.

Q. He did say he had not passed any hundred dollar counterfeit bills within a few days of the time you were questioning him?

A. He insisted that he had not passed any other hundred recently.

Q. Did he then say he was going to see if he could find this man Harry?

A. I asked him to; in fact, I said I would go over with him, but at the time I spoke to him it must have been 5:30 in the afternoon, and he was not certain that this man would be there that late in the afternoon.

Q. Up to that time the only $100 counterfeit bill you knew about was the bill which you had received from Goldie Goldstein, is that correct?

A. That is true.

[fol. 85] Q. You had no knowledge of any passing of a $100 bill in the Lindy Clothes Shop on Mr. Berger?

A. That is correct.

Q. Now, you gave Jones a card with your telephone number?

A. Yes.

Q. And he was to call you if he saw this bookmaker Harry?

A. He was.

Q. When was the next time that you saw Jones?

A. Saturday night.

Q. And when you questioned him on Saturday night had you learned of the pass of the counterfeit $100 bill on Mr. Berger?

A. I had.

Q. Did you question Jones about the pass on Mr. Berger of the $100 bill?

A. I did.

Q. And what did he say about that?

A. He then told me he had been incorrect in telling me on Friday afternoon that he had only gotten one $100 bill from Harry; in reality he had gotten two $100 bills from Harry. I asked him, "Why didn't you tell me that when I was talking to you Friday?" He said, "I thought it was not necessary. I thought that bill was good too, and it was no concern to you to know about it."

Q. Did he subsequently make a statement in writing or sign a statement?

A. He did.

Q. And was this statement made January 8, 1934, at the office of the United States Secret Service, Custom House, New York?

A. It was.

Q. And the defendant signed it in your presence?

A. He did.

Q. He made these answers to these questions in your presence?

A. He did.

Q. And you signed your name to it?

A. Yes.

[fol. 86] Q. And were Agents Johnson and Kirk present when he signed it, and were you present when they signed their names?

A. I was.

Q. Did Jones read this paper before he signed it?

Q. He did.

Mr. Singer: I offer it in evidence, only against the defendant Jones, as being a narrative of past events not intended to be binding against any other defendant at all.

(Mr. Crooks read the statement. Mr. Siegel and Mr. Wegman started to read it.)

The Court: What interest have you gentlemen in it? It is not offered against anybody but Jones. The District Attorney limited his offer as against Jones only, and nobody else.

Mr. Singer: May Mr. Crooks and I discuss a matter with you, your Honor?

The Court: Yes.

(Mr. Crooks and Mr. Singer conferred with the Court, not in the hearing of the jury, after which the following took place in the hearing of the Jury):

The Court: What do you want to take out?

Mr. Singer: It is on this Government's Exhibit 3 against Jones only.

The Court: So there will be no question about it, if there is any part not offered it, should be determined now before I receive it, and that ought to be covered up. You [fol. 87] and Mr. Crooks look it over and pick out the parts that are not receivable. It is offered only as to Jones, and binds nobody else. Agree on the parts and the Clerk will cover those parts up. You understand, Gentlemen, this paper, when it is received in evidence, no matter what

it contains, it binds the defendant Jones only, and is not evidence against any of the other defendants. That part will have to be covered up, Mr. Singer.

Mr. Singer: Yes, or removed physically.

(Marked Government's Exhibit 3 in evidence.)

Q. Now, Mr. Kett, when you questioned the defendant Jones this morning of January 8th at the office of the United States Secret Service, did you have in your possession this bill, Government's Exhibit 2 for identification?

A. No, I do not think I had.

Q. Did you ever show that bill to the defendant Jones?

A. No.

The Court: Which bill is this?

Mr. Singer: Government's Exhibit 2 for identification.

Q. Now, from whom did you receive Government's Exhibit 2 for identification?

A. I received it from the teller that actually had detected it at the bank. I do not recall his name. I think [fol. 88] it was Beegan or Berger. My report will give his name.

Q. William Bergin?

A. Yes, at the Bank of Manhattan.

Q. Did you ever talk to the defendant Jones again after January 8th?

A. No, I did not.

Q. Incidentally, did Jones ever call you between the time you left him on the 5th and Saturday night, when you arrested him and took him into custody at Police Headquarters?

A. He did.

Q. What did he say to you?

A. He called me up one night, it was about nine o'clock, I think it was the night that I spoke to him, in fact, I am positive of it, Friday night, the 6th. He called me about nine o'clock and he told me that he had run across that bookmaker named Harry at Broadway and 43rd Street. I said, "What happened?" I said, "In the first place, why didn't you call me then? What I told you to do was call me right away, and I would go there right away and talk to him in your presence." He said, "I went up to him and spoke to him and said, 'You gave me a bad hun-

dred dollar bill.'" He claimed this Harry got very indignant, walked away from him, started an argument with him, and said, "What are you trying to do, put a fast one over?" He said, "I got sore and walked down to the corner and got a cop, and I told the cop about it, and the cop said, 'Go over to the station house and report it.'" And I said, "Did you ask the cop to arrest this fellow?" He said, "Yes, and the cop refused to do it."

Q. Did he give you a shield number?

[fol. 89] A. And I asked for the shield number and he said he did not know it.

Q. Did you go to the police station to find out whether a report was made?

A. I did not.

Q. No report was made to the Secret Service that a complaint had been made about counterfeit money at that police station?

A. No.

Mr. Singer: Your witness.

(No cross-examination.)

(Witness excused.)

MORRIS L. TUROFF, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. Mr. Turoff, you have an account, or are the custodian of an account, known as the Sunnyside Jewish Center account in the Bank of Manhattan?

A. Yes, sir.

Q. Branch at 46th Street and Greenpoint Avenue, Woodside?

A. Yes, sir.

Q. Do you know the witness Samuel Berger, the man who owns the Lindy Clothes Shop?

A. Yes.

Q. Do you remember on January 5th, this year, he gave you a $100 bill, among some other money?

A. Yes.

Q. Did you take that bill to the bank?

A. I took that bill to the bank. He gave me more than [fol. 90] $100, $250, one $100 bill, and the rest was small dollars and checks.

Q. Did you take the bill as soon as you got it from Mr. Berger to the bank?

A. I sent — with my son Harry straight to the bank.

Q. You did not take it?

A. No, Harry took it.

Q. Is Harry here?

A. Yes.

Mr. Singer: That is all.

Cross-examination.

By Mr. Wegman:

Q. What business are you engaged in?

A. Hardware.

Q. You are president of this Sun——

A. Of the Sunnyside Jewish Center, treasurer.

Q. How long have you been treasurer?

A. Treasuerr of the Sunnyside Jewish Center for the last three and a half years.

Q. Do you know Harry Berger, the defendant in this case?

A. I know Harry Berger for the last five years.

Q. Is that the Harry Berger you know? (Indicating.)

A. Yes, sir.

Q. Do you reside in the same community with him?

A. No, sir; he used to collect rent from me five years ago on Eighth Avenue.

Q. You were a tenant in a building he managed?

A. Yes.

Q. Do you know what his business was?

A. Real estate broker.

Q. Do you know his reputation in the community?

A. I never knew exactly; I never heard anything about him.

[fol. 91] Q. So far as you knew his reputation in that community and as a real estate man, what was his reputation, was it good or bad?

A. I can never tell you exactly. I never heard anything bad about him and I never heard anything good.

Q. You never heard anything bad about him?
A. No.

Redirect examination.

By Mr. Singer:

Q. You never heard anything bad about him and you never heard anything good about him, is that right?
A. Yes.
Q. Well, did you hear that he was convicted in December, 1924, under the name of Harry Levy, for the crime of robbery in the third degree, and was sentenced to Sing Sing from one to ten years?
A. No, sir.

Mr. Wegman: I object.
The Court: You called him as a character witness. You opened it.
Mr. Wegman: Exception.

Q. If you did hear that wouldn't that change your opinion about whether his reputation was good or bad?
A. I never heard anything bad. If I did I would tell you.

The Court: The jury will understand that is not proof that that happened. It is simply an inquiry directed to him as a character witness.
Mr. Wegman: I move for a mistrial.
[fol. 92] The Court: It is denied, and you have an exception. There is authority for this.
Mr. Wegman: Exception.

(Witness excused.)

Harry Turoff, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. That was your father who just preceded you on the witness stand?
A. Yes, sir.

Q. Do you remember the morning of January 5, 1934?
A. Yes, sir.
Q. Did you receive a $100 bill from your dad, together with other money, to bring it to the bank to deposit?
A. Yes, sir.
Q. Did you take that $100 bill your dad gave you and bring it to the bank?
A. In with the other money.
Q. Were there any other $100 bills with that money?
A. No, sir.
Q. When you got to the bank did you give it to the teller?
A. Yes.
Q. And do you know the teller's name?
A. I know his first name.

Mr. Singer: Is Mr. Bergin in court?

(A gentleman stood up.)

Q. Is that the gentleman? (Indicating.)
A. Yes.
[fol. 93] Q. You gave that $100 bill to him?
A. Yes.
Q. Are you certain that the $100 bill you gave him was the same one?
A. Yes.

Cross-examination.

By Mr. Wegman:

Q. Do you know Harry Berger?
A. Yes, sir.
Q. How long have you known him?
A. Five years.
Q. Have you seen him frequently during that time?
A. Time and time again.
Q. Did he ever have a mustache during all that time?
A. Not that I know of.
Q. Always was clean-shaven?
A. Yes.
Q. Do you know his reputation in the community in which he lives?
A. No, sir, I cannot say that I do.
Q. Have you ever had any business dealings with him?
A. Just that he came to collect our rent.

Q. Were your dealings with him pleasant or otherwise?
A. Always pleasant.
Q. Did you know him socially?
A. No.
Q. Did you know any people that had business with him besides yourself?
A. No, sir.
Q. In what connection had you seen him in the last five years?
A. Just as a real etsate man about town.
Q. Do you know what business he has been in during those five years?
A. So far as I know he has been in the real estate business.
Q. Do you know whether he was in that business all the time during the five years?
A. I do not know.
[fol. 94] Q. Do you know whether he is in that business now?
A. I do not know.
Q. Do you know whether he was in that business two months ago?
A. I do not know.
Q. Do you know what his reputation was in the community?
A. So far as I know, he had a good reputation.

Redirect examination.

By Mr. Singer:

Q. If I told you and you found out he was arrested for perjury on the 18th of January this year, would that make any difference as to your testimony of good character?

Mr. Wegman: I object to that question on the ground that the matter is one that the District Attorney knows should not have been brought before this Court, and I respectfully move for a mistrial.

The Court: No, you have called the man as a witness, and he has a right to ask that man if he has ever heard of a certain thing. It is not proof of the fact in itself. It is an interrogation. The motion is denied and you have an exception.

Q. Did you know that?

A. No, sir.

Q. Would that make any difference about your testimony that he had a good character?

A. If he were convicted it would change my opinion of him.

Q. Now I will tell you——

[fol. 95] The Court: Do not tell him.

Q. Do you know he was convicted on December 17, 1924, for the crime of robbery in the third degree and was sentenced to one to ten years in Sing Sing?

A. No, sir.

Q. If you had heard that would that change your opinion about your testimony of his good character?

A. Yes, sir.

Q. And your testimony would not be that his character would be good?

A. I had not heard of it.

The Court: Gentlemen of the Jury, the fact that this question is asked this witness is not proof that there was any such conviction. It is simply a question asked of him on the question of character. It is not proof of such conviction.

Q. You put your initials on this bill?

A. Yes, sir.

Q. I show you Government's Exhibit 2 and ask you to indicate to me where you placed your initials.

A. Right under J. A. K., I put my initial "H. T. 1/5/34."

Q. Did your dad put his initials on there?

A. Right underneath, "M. L. T., 1/5/34."

Q. When you were present?

A. Yes.

(Witness excused.)

[fol. 96] WILLIAM F. BERGIN, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. Are you a teller at the Bank of Manhattan at the branch at 46th Street and Greenpoint Avenue, Woodside?

A. I was.

Q. Were you so employed on the 5th of January, this year?

A. I was.

Q. At that time did you see the last witness, Harry Turoff?

A. I did.

Q. Did he offer a deposit in that bank to the account of the Sunnyside Jewish Center?

A. Yes, sir.

Q. I show you Government's Exhibit 2 for identification and ask you whether you have ever seen that before?

A. That is the bill he presented.

Q. That is the bill that Mr. Turoff, the last witness, gave you among the deposits that morning?

A. Yes.

The Court: Exhibit what?

Mr. Singer: 2 for identification.

Q. Were there any other one hundred dollar bills in that deposit?

A. Just the one.

Q. Did you stamp that bill counterfeit?

A. I did.

Q. Did you put your initials on that bill?

A. Here, with the date 1/5/34.

[fol. 97] Q. Did you give that bill to Agent Kett, Secret Service?

A. I did.

Q. That is the same bill you got from Turoff?

A. Yes.

Mr. Singer: Your witness.

(No cross-examination.)

(Witness excused.)

VITOLA PICCIONE, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. Madam, your first name is Vitola?
A. Yes.
Q. And your last name is Piccione?
A. Yes, sir.
Q. Where do you live?
A. 414 Elton Street, Brooklyn?
A. Yes, sir.
Q. What part of Brooklyn?
A. East New York section.
Q. Now, do you remember last December, December of last year, 1933?
A. Yes, sir.
Q. Did you put an advertisement in the newspaper?
A. Yes, sir.
Q. You know what an advertisement is?
A. Yes, sir.
Q. Did you advertise a diamond ring for sale?
—. Yes, sir.
Q. On December 4th did anybody come to your house to buy that ring?
A. Yes, sir.
[fol. 98]. Q. How many people came?
A. Just a man.
Q. Just a man?
A. Just one man.
Q. Now, will you come down, please, and look all around the court, but look at everybody carefully, and see if you can see the man that came to your house? Look at everybody?
A. Here?
Q. Everywhere. You go ahead and look.
A. I do not see anyone.
Q. You do not see anybody in court who came to your house that day for the ring?
A. No, sir.
Q. Now, a man did come, however.
A. Yes, sir.
Q. Will you describe him to me?
A. He was kind of a dark fellow, dark young man.
Q. Was he heavy or slim?

A. A little stout.
Q. As stout as I am, or thinner?
A. No, just as stout as you.
Q. Could you tell what he looked like? Did he appear to be American or a foreigner?
A. Somthing like a Jewish man.
Q. Did he speak English well?
A. Yes, sir.
Q. No accent?
A. No.
Q. About how old would you say he appeared?
A. About 30.
Q. Was he well-dressed?
A. Yes, he was good dressed.
Q. Did he have dark hair or light hair?
A. Dark hair.
Q. Was it smooth or curly?
A. Just smooth.
Q. Was it slicked back, shiny, or was it sort of straggling like mine is?
A. Just like yours.
[fol. 99] Q. Did he have his hat on all the time he was in the house?
A. No.
Q. He took his hat off?
A. Yes, and put it on the table.
Q. How is your eyesight?
A. What did you say?
Q. How is your eyesight? Is it good?
A. Not so good.
Q. Was it dark in the house or light?
A. It was a little dark.
Q. Do you think you could recognize the man if you saw him?
A. Yes, sir; I think I would recognize him, but I did not see anyone there.
Q. You think you could?
A. Yes.
Q. Are you sure?
A. I am sure.
Q. Now, you were shown a photograph of a man?
A. Yes.
Q. And didn't you say that photograph was the photograph of the man who had been at your house?

A. No, sir.

Q. What did you say about the photograph?

A. I said, "This is not the man."

Q. You said the photograph was not the photograph of the man?

A. Yes, sir.

Q. Or did you say it looked like the man?

A. I say it was not the man I saw. If I see him I would recognize him. I wanted to be sure.

Q. You say unless you are entirely sure?

A. What did you say?

(Question withdrawn.)

Q. Tell me what happened in your house that day.

A. This man came and I sold him the ring for $325.

[fol. 100] Q. You sold him a diamond ring for $325?

A. Yes, sir.

Q. Did he pay you?

A. Yes, he paid $320 in sixteen $20 bills.

Q. $320 in twenty dollar bills?

A. Yes, sir.

Mr. Kroopff: Is there a promise made to connect this transaction?

The Court: If it is not, it will be stricken out, because nobody is identified up to date. Up to the present moment it does not affect anybody here at all.

Q. You say he gave you sixteen $20 bills?

A. Yes, and $5 in good money.

Q. You mean the other sixteen bills were counterfeit?

A. Yes, sir.

Q. What did you do with the sixteen bills you got? Did you give them to your husband?

A. No; my boy saw that.

Q. Is he in court?

A. No, he is not here.

Q. What happened?

A. We telephoned to the place and we gave the money to my husband.

Q. You gave the money to your husband?

A. My husband bring it there.

Q. What happened?

A. Then what shall I say?

Q. You gave the money to your husband?

A. Yes, and my husband bring it to the police station.

Q. Did you have any other $20 bills?

A. No.

Q. Or did you give your husband the $20 bills which this man who bought the ring from you gave to you?

A. Yes, sir.

[fol. 101] Q. You are sure?

A. I am sure I gave my husband to go to the police station.

Q. Did you sign your name on any bills or put your initials on any bills?

A. Yes, I did.

Q. How much later?

A. I do not know how late it was.

Q. I show you these bills. Look at them and see whether those are the bills you wrote your name on; do you see your initial on any one?

A. Yes, sir, I see these two.

Q. On the first two. Now go ahead. Are those the bills you put your initials on?

A. Yes.

Mr. Singer: I offer them as Government's Exhibit 4 for identification.

(Marked Government's Exhibit 4 for identification.)

Mr. Singer: Your witness.

Mr. Kroopff: I make a motion to strike the evidence as not binding on any of the defendants at this time.

The Court: I will ask the District Attorney if he intends to connect it.

Mr. Singer: Of course, your Honor, I intend to connect it. I so stated in opening.

The Court: If it is not connected I will strike it out. The District Attorney says he intends to connect it.

Mr. Wegman: May I ask your Honor to have the record show at this time one of the defendants named in the indictment is not in the court room and has not been here at any [fol. 102] time while this witness has testified.

The Court: Yes, certainly.

Mr. Singer: Is Mr. Katz outside?

(The defendant Katz was brought in the court room.)

Mr. Singer: Bring him up. Step up close.

Q. Look at this man, and I indicate the defendant Katz. Is he the man who was in your house the day you sold this ring?

A. No, sir.

(Witness excused.)

NICHOLAS PICCIONE, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. Mr. Piccione, the lady who was just on the witness stand is your wife, is that right?

A. Yes, sir.

Q. You are engaged in the jewelry business; is that correct?

A. Yes, sir.

Q. And you live at what address?

A. 414 Elton Street, Brooklyn.

Q. Where is your place of business?

A. 72 Bowery, Jewelry Exchange.

Q. That is, you make your headquarters at the Jewelry Exchange?

A. Yes, sir.

[fol. 103] Q. Do you have an office there?

A. Yes, sir.

Q. However, you do a little business at home in jewelry?

A. Yes, I do.

Q. You advertise jewelry for sale at your home?

A. Yes.

Q. And your wife takes care of that if she is home?

A. Yes.

Q. And sometime in December last year you advertised a ring for sale, or your wife advertised it for sale?

A. I did.

Q. And the advertisement gave the address as this Elton Street address to come to, is that right?

A. Yes, sir.

Q. Now, you remember December 4, 1933?

A. Yes, sir.

Q. When you came home that day did your wife give you anything?

A. No; they telephoned me at the place to come home.

Q. When you came home did your wife give you bills?

A. I found 16 counterfeit bills home.

Q. I show you Government's Exhibit 4 for identification and ask you whether those are the bills your wife gave you when you came home on December 4th?

A. Yes, sir; they are all signed by me.

Q. And they are all the bils you got from your wife?

A. Yes.

The Court: What exhibit?

Mr. Singer: Exhibit 4 for identification.

Q. Now, this stone you advertised for sale, you, as a jeweler, knew the stone, didn't you, and the ring?

A. Certainly; yes, sir.

[fol. 104] Q. Did you ever see the ring again after your wife sold it on the 4th of December?

A. Yes, sir.

Q. When did you see that ring again?

A. Two days later, on Monday, about two o'clock.

Q. And where did you see this ring that your wife had sold?

A. One fellow working in the Jewelry Exchange with me offered it to me to sell it, and I recognized the ring and took it.

Q. Do you know his name?

A. Yes, sir.

Q. What is his name?

A. Harris.

Mr. Singer: Harris, stand up.

(A gentleman stood up.)

Q. That is the man?

A. Yes, sir.

Q. And that is the man who offered the ring to you for sale?

A. Yes, sir.

Q. Are you certain that the ring that Harris offered you for sale on Monday was the same ring you had given your wife to sell for you?

A. No doubt it was mine.

Q. No question about it. Did you ask Harris where he got the ring?

A. Yes, sir.

Q. What did he say?

A. He told me a strange man came in to him and offered it to him for sale. He said, "Leave it here and I will sell it," and Harris offered it to me, and I happened to know the ring and I kept it.

Q. You kept the ring?

A. Certainly.

Q. And you turned the counterfeit money over to the police?

A. Yes, I did, the same moment. I did not urn the counterfeit money over after I found the ring; I turned the [fol. 105] counterfeit money — half an hour after I was home, when I received the telephone on Saturday. I found the ring on Monday.

Q. Did Harris tell you he was going to produce the man from whom he bought the ring?

A. Yes, he did.

Q. Did he ever bring the man around?

A. No.

Q. Did he tell you he saw the man and could not bring him over?

A. No; he told me he was waiting, waiting for this man, and two or three days I tried to find out who the man was. I said, "If you do not want to get in trouble, tell me." He waited for the man and the man never showed up.

Q. Did you report to the police you got your ring back?

A. No.

Q. You never told that to anybody until you came to this court?

A. Fine, yes, sir, I did not, not, not even to my own wife I didn't.

Q. Your wife had sold this ring for counterfeit money?

A. Yes, sir.

Q. A man brought the ring and handed it to you?

A. Yes, sir.

Q. Why didn't you report that to the police?

A. So they could find out who had passed the money.

Mr. Siegel: I object.

The Court: You cannot bind them by his mental processes.

Q. But you did not report it to the police?
A. I did not report it because I had a reason.

[fol. 106] The Court: Never mind why.
Mr. Singer: Your witness.

No cross-examination.

Jesse Harris, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. You are in the jewelry business, aren't you?
A. Yes, sir.
Q. Your place of business is the Jewelers' Exchange in New York?
A. Yes, sir.
Q. You buy and sell rings, don't you?
A. No.
Q. What do you do?
A. I am a setter.

The Court: We do not hear you.

A. Diamond setter.
Q. You say you are a diamond setter?
A. Yes, sir.
Q. Whom do you work for?
A. For the trade.
Q. Have you got your place of business?
A. Yes, sir.
Q. Where is it?
A. 72.
Q. Have you got an office there?
A. Yes, sir.
Q. What room number?
A. It is a stall; everybody has a little stall.
Q. Are you alone or with somebody else?
A. Myself and the fellow who runs around and stands at the counter selling.
[fol. 107] Q. In whose name is te stall, your name?

A. My name.

Q. You know Rice, don't you, the defendant Rice? You have done business with him.

Mr. Kamber: I object. That is not fair, and do not start those tactics.

The Court: One minute.

Mr. Kamber: I beg your Honor's pardon.

The Court: If you had waited I would have sustained the objection.

Mr. Kamber: I ask your Honor to direct the District Attorney to try the case in a proper manner and not otherwise, because he and I know each other pretty well.

The Court: I will rule on your objection, but I cannot tell anybody how to try the case.

Mr. Singer: I resent being told I did it improperly.

The Court: I have ruled on the objection, do not talk back to me.

Q. Do you know any of these defendants?

A. No.

Q. Have you ever seen any of them at all?

A. No.

The Court: Who are the defendants, where are the defendants?

The Witness: All those people sitting around.

[fol. 108] Q. Sitting where——

The Court: Wait a minute. Where are they sitting?

The Witness: He pointed them out this morning, he mentioned the names.

Q. You were here this morning?

A. Yes, sir.

Q. By defendants I mean all the people sitting on the other side of the second table?

A. You pointed them out.

Q. You do not know any of those people?

A. What?

Q. You can hear me, can't you?

A. No, sir.

Q. You cannot hear me?

A. Yes, I can hear you.

Q. What is it that is bothering you?

A. Nothing.
Q. I said, do you know any of those people?
A. No, sir.
Q. The defendants?
A. No, sir.
Q. Have you ever done any business with them?
A. No, sir.
Q. Are you certain about that?
A. Yes, sir.
Q. Did you ever see this man Katz that was just brought into court before?
A. No.
Q. You saw him when he was brought in?
A. Just now.
Q. You had a chance to look at him?
A. This morning too.
Q. You never did any business with him?
A. I don't know him.
[fol. 109] Q. About the 6th of December you had a diamond ring, didn't you?
A. Yes, sir.
Q. You are a diamond cutter?
A. Yes, sir.
Q. You did not have this ring to set, did you?
A. No.
Q. You did not have the ring to cut?
A. No.
Q. And you told me you did not sell diamonds, that you only set them?
A. Yes, sir.
Q. You have no license to sell diamonds?
A. At that time, no.
Q. At that time a license was required?
A. I did not go in that at that time.
Q. Isn't that a fact.
A. Yes, sir.

The Court: If it is an offense not to have it, I will instruct you if any question is asked you, the answer——
Mr. Kamber: It may appear there is no license required.
The Court: I do not know; I will warn him. If any question is asked you the answer to which might tend to convict you of a crime or degrade you, you have a right to decline

to answer. Anything you say here may be used against you in any court.

Q. You understand that?
A. Yes, sir.
Q. You had a ring for sale on December 6th?
A. Yes, sir.
Q. You offered it to Mr. ——
A. Piccione.
Q. The last witness?
A. Yes ,sir.
Q. You did not own that ring when you offered it to him for sale?
A. No.
[fol. 110] Q. You were acting as a dealer?
A. Broker.
Q. Arranging that sale. Had you paid for that ring before you offered it to him?
A. No.

Mr. Siegel: I object to this method of bringing this out as improper and leading.
The Court: It is leading. He can tell whether he owned it or did not *not* own it.
Mr. Siegel: Exception.
Mr. Singer: If your Honor pleases, I desire to point out to your Honor that it becomes apparent that this witness is not a friendly witness.
The Court: He said he did not own it. Do not argue before the jury. If he knows who did own it, that is another thing, or who gave it to him.

Q. When did you get this ring?
A. That same day.
Q. What time?
A. About 12 o'clock.
Q. Had you ever seen the man before who gave you the ring?
A. No.
Q. Had you ever done business with that man before?
A. No.

Mr. Siegel: Objected to. That is the same vice.
The Court: No, I will allow that. You may have an exception.

Mr. Siegel: It is immaterial. Exception.

Q. Did you see that man?
A. He was recommended to me.
[fol. 111] Q. Did you see that man at twelve o'clock?
A. Yes, sir.
Q. Who recommended him to you?
A. A certain fellow I deal with, he gives my cards around.
Q. What is this man's name?

Mr. Siegel: I object as incompetent, irrelevant and immaterial.
The Court: He is trying to identify the man.

A. Doc Conger.
Q. What do you mean by "Doc"? Is he a doctor?
A. No, they call him that because that is his nickname, I guess.
Q. He didn't give you the ring?
A. No, he gives my cards out.
Q. Tell me what happened when you got this ring, where were you first?
A. By my case.
Q. You mean in your stall in the Jewelers' Exchange?
A. Yes, sir.
Q. And a man walked up to you and said what?
A. Asked what my name was, and if I knew this fellow.
Q. Knew who?
A. This Doc, and he told me he had a ring for sale. I told him I did not know much about the stuff.

Mr. Kroopff: May I object to this conversation? It is not binding on the defendants.
The Court: Unless he identifies them it is not. Why don't you try to find out who he got the ring from?

[fol. 112] Q. Do you know the man's name?
A. He told me his name was Stern.
Q. Did he tell you where he lived?
A. No.
Q. What is the first name?
A. I never saw him before that twenty minutes.
Q. Did you give him money?
A. No.
Q. He left the ring?
A. Yes, sir, to find out what it was worth.

Q. Did he leave it with you to price it or sell it?
A. To get an estimate.
Q. You offered it for sale?
A. I asked him what it was worth.
Q. Did you offer it for sale or ask what it was worth?
A. I asked what it was worth, to estimate it.
Q. You did not offer it to him for sale?
A. No; I asked him what it was worth.
Q. You say you asked him to tell you how much it was worth?
A. Yes, sir.
Q. And I ask you, did you also offer it to him for sale, did you offer to sell it to him?
A. Not yet.
Q. Did you intend to offer to sell it?
A. I wished to get a price.

The Court: His intentions?
Mr. Singer: Nobody objects. I am waiting. Fourteen counsel are there, each one pretty——
The Court: We will go right along.

Q. Did you ever see that man Stern again?
A. No.
[fol. 113] Q. Mr. Piccione took the ring away from you?
A. I gave it to him.
Q. You gave it to him to ask him to appraise it?
A. Yes.
Q. And then he said, "It is my ring," didn't he?
A. Exactly.
Q. And he would not give it back to you?
A. I did not demand it back.
Q. Did the man who gave you the ring ever come to you again?
A. He told me everything that happened, and he said he would call me back and——
Q. Who called you back?
A. Stern called me back, and I told him everything that happened, and he said he would be down to straighten it.
Q. Did you report it to the Police Department?
A. I did not think anything was wrong with it as far as I was concerned. He said it was his ring and I didn't know anything about it.
Q. Say that again so I can understand it.

Mr. Kroopff: I object to saying it again.
The Court: Ask the question.

Q. What happened?
A. I told him exactly what took place. I asked him where he got the ring, like Mr. Piccione told me. He said it is his ring, "and I will be down to straighten it out." I said, "There is trouble here."
Q. You said there is trouble there?
A. Yes, sir.
Q. You just said a moment ago you did not think it was wrong.
A. He said it was his ring and he leaves a ring for sale, [fol. 114] and there must be something wrong.
Q. You did not report it?

Mr. Siegel: I object as incompetent, irrelevant and immaterial.
The Court: The question whether he reported it I will allow.
Mr. Siegel: Exception.

A. I did not do anything about it. I let the whole matter drop. And——

The Court: You have answered.

Q. In the jewelry business do you have occasion to have engraving work done?

Mr. Siegel: I object, incompetent, irrelevant and immaterial.
The Court: I do not know whether it is or not. He is going to connect it up, he says. He has not yet.
Mr. Siegel: Exception.

A. Yes, sir.
Q. Do you know most of the people in the jewelry business that do engraving?
A. There are so many. I know them downtown.
Q. You had no occasion to know any uptown?
A. No.

Mr. Singer: That is all.
Mr. Hogan: I move to strike out the testimony of Harris]fol. 115[and ask your Honor to instruct the jury to disregard his testimony.

The Court: That is right, but the District Attorney said he will connect it. He said so before.

Mr. Singer: I said so in my opening.

Mr. Kroopff: May I ask him, in addition to his promise to connect it up, to specify the witness he will connect it with, otherwise we are getting a lot of testimony——

The Court: The jury has not heard the name of a defendant mentioned, and the jury is told if it is not connected, to pay no attention to it. All this testimony of this ring, as far as this witness is concerned, is not connected with any defendant at the present time, and unless it is connected you pay no attention to it, and I will strike it out.

(Witness excused.)

EDNA NAPP, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. You work for Nat Lewis Haberdashery Shop at 1580 Broadway, New York?

A. That is right.

[fol. 116] Q. You worked there in December, around Christmas time, last year?

A. I did.

Q. Do you know any of these defendants?

A. Yes, I do.

Q. Do you know one of these defendants or more?

A. (No answer.)

Q. How many do you know?

A. Only one.

Q. Which one?

A. Jack Rice.

Q. Which man is Jack Rice?

(Defendant Rice stood up.)

A. Yes.

Q. He has been a frequent customer in the store?

A. Yes.

Q. You waited on him?

A. I waited on him.

Q. Do you remember sometime around near Christmas of last year that Mr. Rice came into the shop one night to buy some things? Do you remember that night?

A. Yes, I remember.

Q. I think it was Christmas eve, wasn't it?

A. Christmas eve.

Q. Did he buy anything that night?

A. He did.

Q. How much did he buy, about?

A. You mean in money or articles?

Q. Money.

A. $24.50.

Q. Mr. Rice had a charge account in the store, didn't he?

Mr. Kamber: I object. I ask the District Attorney be instructed to ask proper questions and not assume things.

The Court: That, of course, is leading.

[fol. 117] Q. You stated before Mr. Rice had been doing business with the store before?

A. Yes.

Q. Tell me, did he buy for cash, or did he have a charge account?

A. I do not recall, because I do not recall selling him anything particular before this night, so I do not know if he had a charge account or not.

Q. This was the only night you sold him anything?

A. Yes, sir, because I was away from there nine months.

Q. You do not know about the other nights, but this was the only night you sold him?

A. Yes, sir.

Q. You had seen him around the store before?

A. Yes.

Q. I think you so testified?

A. Yes, sir.

Q. How did he pay for the merchandise?

A. That particular night he gave me a hundred dollar bill.

Q. What did you do with the bill?

A. Put it in the carrier and sent it downstairs to the cashier.

Q. Did you ever see that hundred dollar bill again?
A. No.
Q. You never saw it again?
A. No.
Q. Did you ever see Mr. Rice again after that time?
A. Not after that.
Q. You did have some conversation with other persons about the transaction?
A. No, I did not.
Q. Do not tell us what they were.
A. No, I did not.
Q. You talked to Mr. Lewis?
A. The next I knew about it——
[fol. 118] Q. The next time you talked to Mr. Lewis about the transaction?
A. No particular transaction.
Q. About Rice having been in the store?
A. No.

Mr. Kamber: I object to leading.
Mr. Singer: I withdraw it. Your witness.

Cross-examination.

By Mr. Kamber:

Q. All I want to ask you is this, little girl. You know Mr. Rice is a customer of Nat Lewis for a good many years?
A. Yes.
Q. Probably five, six or seven years?
A. Not as long as that.
Q. Five years?
A. Yes, sir.
Q. And you know Jack Rice has been coming in there and buying things right along?
A. That is right.

Redirect examination.

By Mr. Singer:

Q. I show you this bill and ask you is there anything on that bill you wrote?
A. No.
Q. Just look it over.

A. I know there is not. I did not see the bill after it went down in the carrier.

Q. The last you saw of the bill was when it went down in the carrier?

A. Yes.

(Witness excused.)

[fol. 119] NAT LEWIS, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. You know the defendant Rice?

A. Yes, sir.

Q. He was a customer at your store?

A. Yes.

Q. He bought from you frequently during the last four or five years, I think, as his counsel said?

A. Yes.

Q. Will you tell me what happened the morning of the 25th, when the cash was counted in the store?

Mr. Kamber: I object as leading. He asked him what happened on the 25th of December when the cash was counted, or something else happened.

The Court: He is addressing his attention to the time. Your objection is overruled. His attention is directed to a certain time.

A. The Irving Trust Company——

The Court: That is not what he asked you. He asked you did anything happen at a certain time.

Q. When the cash was counted?

A. I know nothing about the cash.

Q. Some time later during the day did you receive certain information from the Irving Trust Company?

[fol. 120] A. Two or three days later.

Q. As a result of that did you talk to the defendant Rice?

A. I did.

Q. What did you say to Rice and what did he say to you?

A. I 'phoned Mr. Rice I would like to see him.

Q. A little louder.

A. I 'phoned Mr. Rice I would like to see him in reference to a $100 bill he gave us Christmas eve, and he said he would come right over and discuss it with me. I told him the $100 bill had been returned by the bank as counterfeit, and that all indications pointed that he had given us the $100 bill. Mr. Rice told me if I thought he had given me the $100 bill he would make it good. I told him I thought so, and he gave me $50 on account and said he would pay me the balance a little later. He said he thought he knew who gave him the $100 bill. I told him would he let me know who gave it to him. He said he would. Mr. Rice came back a little later and gave us the $25, and that is the last transaction I had with Mr. Rice.

Q. Now, subsequently did the $100 bill come into your possession, was it brought back and shown to you?

A. Yes, sir.

Q. I show you this bill and ask you whether you ever saw that bill before?

A. I would not know whether——

Q. Look up in the corner.

Mr. Kamber: I object. Let him look at it.

A. I could not say definitely whether this is the $100 bill.

[fol. 121] Q. Will you look at the margin on the face of the bill, look at the other side of the bill, please? There is some writing on there—let me have it, please.

(Bill handed to Mr. Singer, who handed it back to the witness, and indicated a place on the bill.)

A. That is not my writing.

Q. Is there any of that writing on the back yours?

A. No, sir.

Q. You never wrote there?

A. No.

Q. Did you ever see the bill again?

A. I believe this is the bill the Irving Trust Company sent.

Q. Why do you say that?

A. It looks like the same bill.

Q. Is there any mark on it?

A. Whoever wrote "Nat Lewis" on it—somebody from the shop must have done that.

Q. Do you recognize the handwriting as being the handwriting of anybody employed in the shop?

A. Maybe the cashier.

Mr. Siegel: That is objected to, whether he recognizes the handwriting of anybody in the shop.

Mr. Kamber: He has to prove the handwriting.

Mr. Singer: He may know it.

The Court: You are asking if he recognizes the handwriting. You have to show familiarity.

[fol. 122] Q. You see the cashier's handwriting often?

A. It is pretty hard to say.

Q. You cannot tell?

A. No.

Q. You do not know whether that is the bill that came back to the store?

A. Positively no.

Q. Would you say it looks like it?

A. It looks like it.

Mr. Singer: I ask it be marked for identification.

(Marked Government's Exhibit 5 for identification.)

Mr. Singer: Your witness.

Cross-examination.

By Mr. Kamber:

Q. Oh, I do not want to ask you but one, two or three questions——

Mr. Singer: Without the speech.

Mr. Kamber: You stand next to me.

The Court: If you gentlemen will stop your discussion before the jury, or address your remarks to me, or ask questions of the witnesses, we will get along better.

Q. You know Jack Rice a number of years?

A. Yes, as a customer.

Q. And he paid you back $50 or $75 on the bill?

Mr. Singer: Do you mind if I hear you, Mr. Kamber?

Q. And he paid you $50 or $75?

A. $75.

[fol. 123] Q. In other words, he said, "If you think that bill is mine, I am going to make it good?"
A. That is right.
Q. And he did?
A. Yes.

Redirect examination.

By Mr. Singer:

Q. And he also said he thought he knew the man who gave it to him?
A. Yes, sir.
Q. Up to now he never told you the man who gave it to him?
A. No.

Recross-exaxination.

By Mr. Kamber:

Mr. Singer: Get it straight.
Mr. Kamber: I don't need it straight. It is straight all the time.

Q. This bill that the District Attorney showed you, you do not know that is the bill Rice gave you?
A. I could not definitely say.
Q. As a matter of fact, you do not know anything about that bill other than what the bank told you?
A. That is right.

Mr. Singer: Thanks very much.
Mr. Kamber: Take my thanks too.
Mr. Singer: Oh, now, Morris, behave yourself.
The Court: I did not hear the remarks, but I think it improper to discuss between yourselves after I asked you to stop, and I insist you stop, both of you.

[fol. 124] Bernard K. Zimmerman, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. You have an office at 271 Broadway, Manhattan, is that correct?

A. 270.

Q. You practice law there?

A. I do.

Q. Now, do you see this man I indicate, the defendant Jack Katz?

A. I do.

Q. Have you ever seen him before?

A. I have.

Q. Now, when did you see Mr. Katz before?

A. I think the first time I saw him was on December 21st, if I recall correctly.

Q. When?

A. December 21st.

Q. 1933?

A. That is correct.

Q. Now, at that time did you have advertised for sale through the newspapers of this city a diamond ring?

A. My brother had a diamond ring advertised for sale.

Q. And when Mr. Katz came there did he talk to you or to your brother?

A. He spoke to me.

Q. How many times was he there in all?

A. Once.

Q. Is that the time he bought the ring?

A. Yes, sir.

Q. And tell me what he said and what did you say at the time you saw him?

A. Well, he came up to the office and represented that he was a sort of free lance dealer in diamonds, that is, not that he was a real diamond dealer, but he engaged in transactions once in a while when his friends wanted to purchase [fol. 125] some jewelry, and that he had such a friend who wanted to buy a diamond engagement ring, and that he came up to the office in response to the ad, and said it was pretty much the type of ring he wanted. He had telephoned to the office several times that day previous to coming to the office. I showed him the ring.

Mr. Siegel: This is all objected to on the ground that it is incompetent, irrelevant and immaterial, and if they intend to connect it with the witness Katz, in so far as my client is concerned, the testimony would be illegal and incompetent.

The Court: Anything that is testified here as having been said by the witness Katz, or done by the witness Katz, or that the witness Katz will testify to here, does not bind his wife. The wife cannot be bound by any testimony given by the witness Katz, and she is not bound.

Mr. Siegel: May I ask your Honor to rule the testimony is incompetent against Mrs. Katz at this time?

The Court: He has to take the testimony as it is, against whom it may be, but I tell the jury it does not bind the wife of the witness Katz, that is, the defendant Ray Smorgan Katz is not bound by what Katz did or said.

Mr. Siegel: May I ask the District Attorney to state through what witness, or if it is the witness Katz, he intends [fol. 126] to connect this testimony up as against Ray Smorgan Katz?

The Court: No, we will take it as we go.

Mr. Kamber: Will your Honor direct the jury's attention to the fact that anything this witness did with Katz binds Katz and nobody else?

The Court: I cannot say that, because there is a conspiracy. The declarations or actions of any conspirator would bind the others, except Katz does not bind his wife.

Mr. Kamber: In a conspiracy there must be some connection.

The Court: Wait. I have not found that the case could be proved out of the mouth of one witness. If no conspiracy is established, then these acts and statements will bind only the person who does and says them. If conspiracy is established, then the action of any conspirator or the statement of any conspirator would bind all the other conspirators, except Katz by his actions or statements, does not bind his wife.

Mr. Wegman: As long as the jury has heard your Honor's explanation, will you make this additional statement: That in order to be binding on the so-called conspirators the statements and acts must have occurred during the course of the conspiracy.

[fol. 127] The Court: That is true. I thought that was

fairly understood from what I said, and they must be acts in furtherance of the conspiracy, which conspiracy must be established.

Q. Tell me what he said and did.

A. The ring was advertised at a price of $650, and finally, after some discussion, I finally arranged to sell the ring to him for $570.

Q. Did he tender payment for the ring?

A. He did.

Q. How did he tender it?

A. In six $100 bills.

Q. I show you these bills and ask you whether those are the bills that you received in payment for the ring?

A. They are.

Q. No question about them, is there?

A. Not the slightest doubt.

Q. You are positive those are the bills Katz gave you in payment for the ring?

A. I will look them over again now.

Q. Look them over.

A. There is no doubt about it; those are the bills.

Mr. Singer: May they be marked Government's Exhibit 6 for identification.

(Marked Government's Exhibit 6 for identification.)

Q. Now, Mr. Zimmerman, have you ever seen your ring again?

A. No.

Q. You never got good money for the bad money?

A. No.

[fol. 128] Q. And you parted with the ring and $30 in cash, is that correct?

A. No.

Q. What happened then?

A. He did not get the $30.

Q. Thank goodness for that. How did that happen?

A. I did not have $30 in my pocket, and I told him I would have to get it for him from another attorney in my suite, and I walked to the end room of the suite to get the $30, and upon my return to my office he had gone.

(Witness excused.)

MARY DALTON, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. Miss Dalton I believe was the name?
A. Yes, sir.
Q. Are you employed in the office of Dr. Leo Michel, 853 Seventh Avenue, New York City?
A. Yes, sir.
Q. Did you see the witness or the defendant Katz in court?
A. Yes, sir.
Q. Had you ever seen him before?
A. No, never.
Q. I do not hear you.
A. Never.
Q. You never saw Katz before?
A. I saw him December 19th.
[fol. 129] Q. That is what I mean, you saw him December 19th?
A. Yes, sir.
Q. Where did you see him?
A. Dr. Michel's office.
Q. Was he examined by the doctor?
A. Yes, sir.
Q. Did he pay the doctor?
A. He paid me.
Q. I show you this bill and ask you whether that is the bill you received from Katz on the 19th at Dr. Michel's office on Seventh Avenue, New York City?
A. Yes, sir.
Q. Did you put a mark of identification on it?
A. Yes.
Q. Are you certain that is the bill?
A. I am positive.
Q. No doubt in your mind?
A. Not any.

Mr. Singer: I ask that be marked Government's Exhibit 7 for identification.

(Marked Government's Exhibit 7 for identification.)

Mr. Siegel: I move to strike out this witness' testimony if it is not subsequently connected. I have to make that motion, because I judge it will have to be connected through Katz.

The Court: I have instructed the jury. When it is all in, I will take care of it.

Mr. Siegel: Exception.

(Witness excused.)

[fol. 130] Robert L. Godby, called as a witness on behalf of the Government, was duly sworn.

Colloquy

Mr. Singer: Now that he is sworn I would like to withdraw him and call another witness.

The Court: Does anybody object?

(Nobody objected.)

(Mr. Singer calls the defendant Katz.)

Mr. Singer: May I at this time ask your Honor to ask the jury to leave the room, please? I want to make a statement on the record before this witness is called, in the absence of the jury. In the absence of the jury I want to make a statement.

The Court: Does anybody object to that?

Mr. Singer: I want it made so there is no question about it.

Mr. Kroopff: It is what his intentions are.

The Court: He wants to say something, I do not know whether it is to the Court or to whom. Does anybody object to it?

(Nobody objects.)

The Court: Does anybody object?

Mr. Hogan: No objection on the part of Lee.

Mr. Wegman: No objection, but I reserve the right to have the statement read to the jury.

Mr. Singer: Certainly. I just want to make the record [fol. 131] clear in one regard before I call the witness.

The Court: I do not know, if it does not go before the jury, I do not know what the effect is.

Mr. Singer: It probably may go before the jury, or if you will allow us to go into a conference.

The Court: I will allow you gentlemen to confer among yourselves for a moment

(All counsel confer.)

Mr. Kroopff: Counsel have decided the statement should be made in the presence of the jury.

The Court: All counsel agree to that?

(No comment made by counsel except as follows):

Mr. Siegel: I do not want any agreement that has been made to have it understood in the slightest degree that I claim this witness is competent, and therefore his statement is a proper offer; in other words, I object to this man being called as a witness and being permitted to take an oath, being permitted to be a witness against Ray Katz, and therefore any statement made by counsel in so far as it respects the witness, who I feel is not a witness, I object to, and do not want to waive my rights.

The Court: You do not take objection to his making the statement. The substance of the statement you do not [fol. 132] agree with, but you have no objection to making it.

Mr. Siegel: Not in so far as making it.

Mr. Kroopff: I would like this statement to be made while the witness Katz is excluded from the room.

Mr. Singer: That is correct. Take him out.

(The defendant Katz was taken from the court room.)

Mr. Singer: For the record, the United States Attorney has informed and desires to inform the Court and jury and all of the defendants and their attorneys, that prior to calling the defendant Katz to the stand as a witness the Government has made a certain agreement or promise to the defendant which consists of the following terms: I have stated on behalf of the United States Attorney that if Katz would testify truthfully that I would gauge that truthfulness by his testimony heretofore given in various places, and if I believed his testimony was truthful and he would testify in this case, I would accept from him a plea to the conspiracy count of the indictment, and subsequent to the acquittal or conviction, or the disposition of this case, I

would nolle the other counts against the defendant. I have also informed the defendant that I would use my best offices to achieve for the defendant two things, one a separation [fol. 133] from the defendants in this court during the trial, and the same thing after sentence, nor have I promised to attempt in any way to influence the Court in the question of sentence on the count to which the defendant's plea will be accepted.

Mr. Kamber: Do I understand the District Attorney will recommend all he stated for the consideration of the Court?

The Court: That is correct, all except the motion to nolle, where the Court has no discretion. The rest of it the Court is not bound by. As to any promise made by the District Attorney, the Court holds itself free, but if the Court cannot refuse to grant the motion to nolle prosse.

Mr. Singer: The effect of it being that the defendant——

The Court: Never mind; you stated it all.

Mr. Kamber: That is perfectly all right.

The Court: You stated it all. The Court stated it is not bound in any way by any agreement.

Mr. Siegel: I object on behalf of the defendant Ray Smorgan Katz to his being called as a witness in this case.

The Court: I cannot separate the defendants, but will again tell the jury the defendant Ray Smorgan Katz is not [fol. 134] bound by anything this witness, her husband, testifies to, because the husband cannot testify against the wife. Whatever testimony he gives can only be binding on other defendants, and not on her at all.

Mr. Siegel: Your Honor will give me an exception?

The Court: Not to that instruction, but to calling him.

Mr. Siegel: Yes, and also your Honor's instruction does not cure the error of allowing this man to be a witness against his wife.

The Court: I said he is not a witness against his wife.

Mr. Siegel: Exception.

The Court Gentlemen, do not allow anybody to talk to you about the case, do not discuss it, do not form any opinion until it is finally submitted to you, and you have a recess of five minutes.

(After recess, the jury returned.)

JACK KATZ, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. Mr. Katz, how old are you?
A. Thirty-one.
[fol. 135] Q. I wish you would speak so we can all hear you?
A. Thirty-one.
Q. Where were you born?
A. Philadelphia.
Q. Educated in Public Schools, elementary schools?
A. Yes, sir.
Q. Did you go to High School?
A. Yes, sir.
Q. How long?
A. Graduated.
Q. Did you ever have education besides a High School education?
A. No.
Q. Is your answer "No?" Please answer loud so I can hear you. You were convicted of the crime of forgery some years ago, is that correct?
A. Right.
Q. Did you plead guilty or were you found guilty by a jury?
A. I pleaded guilty.
Q. And you were sentenced to a term of imprisonment in Sing Sing Prison?
A. That is correct.
Q. And at the present time you were out on parole from that offence?
A. Yes.

The Court: Was your answer "Yes"?
The Witness: Yes, sir.

Q. And you appreciate, do you not, that your testimony here is sufficient proof of a violation of your parole so you

will go back to Sing Sing so you will do the balance of your time there?

A. I know it, yes, sir.

Q. And you also understand you are going to plead guilty to the conspiracy count in this case?

A. Right.

Q. And you expect to get a jail sentence from this court, is that correct?

A. I suppose so, yes.

[fol. 136] Q. You may have other hopes, but there have been no promises made that you were going to get anything but a jail sentence?

A. No promises made yet.

Q. Have you ever been convicted of any other offense at all, with the exception of the forgery charge and your possible conviction on your plea in this case?

A. Yes.

Q. You have been convicted of another offense?

A. Yes.

Q. Where and when?

A. Philadelphia.

Q. For what crime, please?

A. Petty larceny.

Q. Once or more than once?

A. Once.

Q. And is that all?

A. I have been arrested but never convicted.

Q. I am talking about convictions. You have been arrested frequently?

A. Yes, sir.

Q. And you have been convicted two times and this will be your third?

A. Yes, sir.

Q. Once for petty larceny, once for forgery, and now in this counterfeiting case?

A. Yes.

The Court: Now, then, if any questions are asked of you the answers to which would tend to convict you of any crime other than this one we have here under consideration, or these crimes we have under consideration, or those you said you pleaded guilty to, you have a right to refuse to answer on the ground it might convict you of some other crimes

than those you mentioned, or degrade you in the community. Whatever you say here may be used against you in any court at any time.

[fol. 137] Q. Do you understand that?

A. Yes, sir.

Q. Now, among all the defendants in the court room here, whom did you first meet, whom did you know first?

A. Lee.

Q. Now do not tell me where you met him, but you know him how long?

A. I had known him when I was in Sing Sing.

Q. Please do not tell me where. How many years do you know him?

A. Three and a half years.

Mr. Hogan: If your Honor please, I ask to have the answer stricken and move for a mistrial.

The Court: On what ground.

Mr. Hogan: I understand Mr. Katz said in reference to Lee he met him in Sing Sing.

The Court: I cannot help that.

Mr. Hogan: I press my motion.

The Court: Denied. I cannot help where he met him.

Mr. Hogan: Exception.

Q. Did you meet him in New York City about a year ago?

Mr. Kamber: I object, if your Honor please. Your Honor can readily see——

Mr. Singer: What I am trying to do is avoid what happened before.

Mr. Kamber: Will you excuse me a minute?

Mr. Singer: I will be glad to.

Mr. Kamber: I will address myself to the Court. I say [fol. 138] to your Honor I object to it on the ground that the question is leading, and in view of the fact this witness, under the statement of Mr. Singer, has pleaded guilty and said he would tell everything, he should not be led.

The Court: You had better ask where he met him.

Mr. Singer: I was trying to avoid the last situation.

The Court: I understand. Mr. Kamber does not want you to avoid it.

Mr. Singer: Then I won't worry about avoiding it.

The Court: Do you want to press your objection, Mr. Kamber?

Mr. Kamber: He got it out already. Let him ask as he did. I ask your Honor to instruct him not to lead.

The Court: I have instructed him. He was limiting the time.

Q. Did you meet Lee about a year ago in New York City?

A. Yes, sir.

Q. When was it, approximately? Give me the month.

A. Around March.

Q. Of 1933?

A. Yes, sir.

Q. A little louder, Katz, I cannot hear a word, really. Where did you meet him?

A. Met him outside of the front of the Victoria Hotel, New York City.

Q. Did you have some talk with him?

A. Yes, sir.

[fol. 139] Q. As a result of that talk did you meet anybody else later?

A. Yes, I met Jack Rice.

Q. Whom did you meet after that?

A. Met the man he was working for after that, Jack Rice.

Q. Which man is Rice?

A. The first man.

Q. The first man at the table with the dark suit and purple shirt?

A. Right.

Q. Which one is Lee?

A. The last fellow with the dark suit.

Q. With the dark suit and black tie, is that right?

A. Yes.

Q. Now, before you met Rice through Lee, did you have any talk with Lee?

A. Yes, I had a conversation with Lee.

Q. Was it about meeting Rice?

Mr. Kamber: I object.

The Court: Do not lead him.

Mr. Kamber: That is not fair.

Q. What did you say to Rice or Lee, rather, and what did he say to you?

A. He just told me where he was working and how he was getting along, and wanted to know when I got out; just a general conversation; told me where he was working. I went up there one day to see him and I met Rice there.

Q. Did you have any talk with Rice?

A. Yes, a few weeks later I spoke with him in the office.

Q. Where was Rice's office?

A. In the Longacre Building.

Q. Where is that located?

A. 42nd Street and Times Square.

[fol. 140] Q. Manhattan?

A. Yes, sir.

Q. How many times were you in the office of Mr. Rice altogether, would you say?

A. A couple dozen, you said?

A. Yes, sir.

Q. Did you know what business was being conducted in Mr. Rice's office?

A. There was an engraving business there, yes, sir.

Q. Who was the owner?

A. Rice was.

Q. Now, you say about two weeks after you first met him you had talk with Rice, is that right?

A. That is right.

Q. What did you talk about?

A. Well, he asked me what I was doing. I told him I was not working or anything, and they were telling me about some labels they were making, some beer labels, and told me if I knew any breweries I could go out and sell them and get a commission on them.

Mr. Kamber: Was that conversation in March?

Q. Do you know what month it was?

A. This conversation was around May.

Mr. Kamber: What did you say, in March?

Mr. Singer: He said May, Mr. Kimber. Move your chair up a little closer.

Mr. Kamber: May I say to your Honor, may I refer to your Honor the ninth count of the indictment, which is evidently the conspiracy count, sets up beginning on or about the 15th day of November, 1933, and continuing up

[fol. 141] to and including the date of the filing of this indictment.

The Court: That may be, but he is trying to show how well he knew him. He could become acquainted with him before.

Mr. Kamber: That is all right.

Mr. Singer: The Government is not limited between those two dates under the rule in U. S. v. Ledbetter.

Q. Tell me what happened after this conversation in May.

A. Well, I went up to see a few people about selling labels.

Mr. Kamber: I object as incompetent, irrelevant and immaterial, not within the purview of the indictment with respect to conspiracy.

The Court: Overruled.

Mr. Kamber: Exception.

A. I spoke to quite a few people about the labels.

Q. Louder.

A. I spoke to quite a few people about the labels, seeing if I could dispose of them. One or two of them agreed to take some of the labels.

Q. What kind of labels were they?

A. Beer labels.

Mr. Kamber: I object to that. It is entirely incompetent, irrelevant and immaterial, anything about beer labels.

The Court: He is not charging that as a crime. He is [fol. 142] telling about what he was selling.

Mr. Kamber: Exception.

Q. What happened after that?

A. After that I got into trouble and went into Sing Sing for violation of parole.

Q. When did you come out?

A. November 15th, and went to the office to see Rice.

Q. Did you see Rice again?

A. Yes, sir.

Q. Did you see Lee again?

A. I did not see Lee the same day.

Mr. Kamber: I object to this form "Did you see Rice again, Lee again," without time or place.

The Court: Overruled, and you have an exception. He is up to November 15th now.
Mr. Kamber: Exception.

Q. Now tell me, where did you see him?
A. Up in his office.
The Court: Whereabouts was that?
The Witness: Longacre Building.
Q. Was it the same place the office was at before you left for your violation of parole?
A. Yes, it was, the same room.
Q. Who was in the office when you saw him the first time after you came back?

Mr. Kamber: I ask that this attorney be told to give the [fol. 143] date of the first time.

Q. I will ask you again, how long after you came back on the 15th of November, was it when you saw Rice again?
A. I do not know whether it was two or three days after.
Q. Approximately two or three days after?
A. Yes, sir.
Q. Did you have a talk with Rice?
A. Yes, I did.
Q. Tell me everything he said and everything you said.
A. I needed some money ——

Mr. Kamber: I move to strike that out.
The Court: Yes, tell what you said and he said.

Q. Tell me what he said.
A. How am I going to bring it out?
Q. Tell us what you said and he said to you.
A. He told me had an idea where we could make some money, taking ads out of newspapers, people advertising for rings and different things, and I could go over and buy the ring and give him this money.
Q. What money?
A. The money I got from him.
Q. Did he tell you what kind of money it was?
A. Yes; I knew it was counterfeit money.
Q. Did he say it was counterfeit money?
A. Yes, he knew it.
Q. Did he show you any counterfeit money at that time?
A. Yes.

[fol. 144] Q. What kind of bills were they?

A. The first time I saw $20 bills.

Q. Did you ever see any other kind of bills later?

A. $100 bills.

Q. Did you go to the office of the witness Bernard K. Zimmerman, and did you buy from him a diamond ring?

Mr. Kamber: I object, incompetent, irrelevant and immaterial as against the defendant Rice.

The Court: Overruled.

Mr. Kamber: Exception.

A. Yes.

Q. Now, before you went to Mr. Zimmerman's office had you spoken to Rice?

A. Yes, sir.

Q. Had you spoken about anything, or did you speak about anything before you left him?

A. Yes; there was an ad in the paper "Ring for sale."

Q. Who said that?

A. Rice was picking out the ads for me.

Q. Did Rice pick out this ad of Zimmerman's?

A. Yes, we both did.

Q. How much money did Rice give you that day?

A. He gave me six $100 bills.

Q. Were they counterfeit bills?

A. Yes, sir.

Q. Now, what did you do with the six counterfeit ——

Mr. Kamber: May I ask your Honor to direct the District Attorney to ask the date?

The Court: Let him try to fix the date.

[fol. 145] You may cross-examine as to dates.

Q. Do you remember when it was you went to see Mr. Zimmerman?

A. I do not remember the date.

Q. Was it before New Year's or after New Year's?

A. Before New Year's.

Q. During the month of December, was it?

A. Yes, sir.

Q. Was it before Christmas?

A. Yes, about a week and a half before Christmas.

Q. Did you buy a ring from Mr. Zimmerman?

A. Yes, sir.

Q. And did you give Mr. Zimmerman the counterfeit bills?

A. Yes, I did.

Q. Now I show you these bills, Government's Exhibit 6 for identification, which consist of six $100 bills. Are those the bills which you gave to Mr. Zimmerman?

A. Yes, sir.

Q. And are those the bills that you got from Rice?

A. Yes, sir.

The Court: That is exhibit what?

Mr. Singer: Government's Exhibit 6 for identification.

Q. Now, Katz, what did you do with the ring that you got from Mr. Zimmerman?

A. I gave it back to Rice.

Q. You gave it back to Rice. Did Rice ever tell you what he did with the ring?

A. He told me I got stuck, the ring was not worth $200.

Q. And did he tell you what he did with the ring?

[fol. 146] Mr. Kamber: I object to the form of the question. It is leading.

The Court: No.

(To the witness): Did he ever tell you about any disposition he made of it at all?

The Witness: No, he did not.

Q. He never did?

A. No.

Q. Did you go to the office of Dr. Michel to be examined?

A. Yes, sir.

Q. And did you pass a counterfeit $100 bill over there?

A Yes, sir.

Q. Where did you get that counterfeit?

A. From Rice.

Q. What did you do with the change from the counterfeit $100 bill you passed on Dr. Michel?

A. Gave it to Rice.

Q. Did you get anything out of the Zimmerman transaction?

A. Nothing.

Q. Were you working for nothing?

A. Well, he did not sell the ring yet.

Q. Was there any talk about how you were to get your money?

Mr. Kamber: I object, leading.

The Court: What was all the talk about? You do not want to lead him too much.

Q. Did you have any talk about your payment for the Zimmerman transaction with Rice?

A. Yes, I had a few talks with him.

Q. What was said?

A. Each time he told me he could not get rid of the ring and would not sell it for that price, and I told him I [fol. 147] wanted some money, and he told me that he had a man who wanted to buy it, and he had not sold it yet.

Q. Did he mention the name of any man who wanted to buy it?

A. No.

Q. Did he ever mention——

Mr. Kamber: Now wait.

The Court: Wait a minute.

Mr. Kamber: He will probably give him the name now.

Q. Did he mention any name in connection with the disposition of the Zimmerman ring?

Mr. Kamber: He already answered that in answer to your Honor's question.

The Court: Overruled and exception. Answer the question.

A. Yes.

Q. What name did he mention?

A. A man named Phil, that is all I know.

Q. Did you ever see Phil?

A. Yes, sir.

Q. Did you see him in court this morning?

A. No.

The Court: I am sorry, Mr. Singer, but one of the jurors said he has to go at 4:30, and we have reached 4:30; I am sorry, I would like to have kept on, but you have to get away.

A Juryman: Yes, your Honor.

[fol. 148] The Court: All right. Do not discuss the case or talk among yourselves about it or form any opinion about it. We will take a recess until ten o'clock tomorrow instead of 10:30.

Adjourned to Tuesday, March 20, 1934, at 10 A. M.

Brooklyn, N. Y., March 20, 1934.

Met pursuant to adjournment at 10 A. M.; present as before.

JACK KATZ resumed the stand.

Direct examination continued.

By Mr. Singer:

Q. Now, Mr. Katz, we were talking last night when we adjourned for the day about the Zimmerman ring, and I believe your testimony was that when you spoke to Rice about the ring he mentioned the name of Phil; is that right?

A. Yes, right.

Q. Did he mention the last name of the man named Phil?

A. No, he did not mention the last name.

Q. Did you ever hear the name Harris in connection with the ring?

A. No, I did not hear the name Harris.

Q. You did not?

A. No.

Q. In connection with the Zimmerman ring?

A. I remember the name Phil. I do not know what the [fol. 149] last name was. I am not sure whether it was Harris or not.

Q. When did you first get counterfeit money from the defendant?

The Court: Which defendant?

Q. Talking about the defendant Rice, which is the only man you said you got counterfeit money from.

Mr. Kamber: I object to the description "only man", and move to strike it out.

The Court: Yes.

Q. Did you get any counterfeit money from any other defendant?

A. No, sir.

Q. Who was the person from whom you received counterfeit money?

A. From Rice.

Q. Now, did you get the money from Rice——. (Question withdrawn.)

Q. Where was Rice when you received the money?

A. In his office.

Q. The first time?

A. In the Longacre Building, in the office.

Q. How many times before would you say Rice gave you counterfeit money in his office in the Longacre Building?

A. About six or seven times.

Q. Did you ever receive any counterfeit money from Rice at any other place?

A. Yes, sir.

Q. What other place?

A. At the Victoria Hotel.

[fol. 150] Q. Any room number there?

A. I think it was 1121. I am not quite sure.

Q. 1121?

A. I think that was the room I occupied, I am not sure.

Q. It was your room you occupied, is that correct?

A. Yes, sir.

Q. Now, the first time that you got counterfeit money I think you said was a few days after November 15th?

Mr. Kamber: I object to this form of questioning. I ask that Mr. Singer direct the witness to a question and let him answer, and not have Mr. Singer testifying what he thinks he told us. It is getting a lot of stuff before the jury he cannot prove.

The Court: He already testified when he first saw him.

Q. You testified that you received counterfeit money from Mr. Rice a few days after November 15th?

A. Yes, sir.

Q. Was there anybody else present when you received this counterfeit money from Mr. Rice?

A. At the hotel or office?

Q. I am speaking of the first time you received counterfeit money from Rice.

A. Yes, sir, there were people in the office there.

Q. Was Mr. Lee present?

Mr. Kamber: I object to the form of the question.

The Court: Yes. Ask who was there.

[fol. 151] Q. All right, who was there?

A. There was a fellow named George——

Mr. Kamber: Will your Honor direct the witness to talk louder?

Mr. Singer: I do not mind your objecting, but if it is an act to disconcert this witness you won't get away very long.

The Court: Wait a minute, stop all this talk, both of you. In the first place, you interrupted the witness, and nobody could hear him, and I will tell him to speak louder so we can all hear him.

Q. Who was there when you received the counterfeit money from Rice in his office in the Longacre Building a few days after November 15th, 1933?

A. There was five or six people there, but I do not think they knew I was receiving counterfeit money.

Mr. Kamber: I move to strike that out.

The Court: Strike out that part. There were a good many people there.

Q. Can you tell me the names of the people who were there?

A. None of these defendants were there.

Q. None of these defendants?

A. No.

Q. Were any of these defendants ever present when Rice gave you counterfeit money?

Mr. Kroopff: I object to the form of the question.

[fol. 152] The Court: Overruled.

Mr. Kroopff: Exception. Mere presence without knowledge of the transaction is insufficient——

The Court: I have ruled.

Mr. Kroopff: Exception.

A. I think Lee was working in the office one day when I got the money.

Q. Did you ever meet Rice any other place other than the Victoria Hotel and his office in the Longacre Building?

A. Yes, I met him at the Wellington Hotel.

Mr. Kamber: I do not want to interrupt——

Q. Any other place?

A. Roth's Grill.

Mr. Singer: I will go back here. Speak louder.

Q. And how many times did you meet him in Roth's Grill, speaking now of Rice?

A. Twice.

Q. On both occasions was Mr. Rice alone or was there somebody with him?

A. Somebody with him.

Q. Who was with him?

A. Lee.

Q. Now, on those two occasions were you alone or was there somebody with you?

A. I was alone.

Q. Did you know that anybody was going there with you?

[fol. 153] A. I surmised that I was being tailed, yes.

Mr. Hogan: I object.

The Court: Strike out what he imagines.

Mr. Singer: I consent.

Q. Did you see anybody else there that you knew in Roth's Restaurant?

A. Yes, sir.

Q. Who was it?

A. Ray Connelly from the Daily News, Mr. Fitzgerald.

Q. Agent Fitzgerald. Who else?

A. Agent Godby, Detectives O'Brien and Shulteis.

Q. Were all those people in Roth's Restaurant when you met Rice and Lee?

A. Yes.

The Court: Where was that place?

Mr. Singer: Roth's Restaurant.

Q. Where is Roth's Cafe, Restaurant or Grill?

A. Broadway around 49th or 48th, I do not know the exact address.

Q. Did you meet Mr. Rice there pursuant to an appointment?

A. Yes, sir.

Q. How was that appointment arranged?

A. Telephone.

Q. And did you call Rice on the telephone and make an appointment?

A. Yes, I did.

Q. Had you ever spoken to Rice before on the telephone?

A. Yes, sir.

Q. And you knew that the voice that answered you this day when you made the appointment was the voice of Mr. Rice?

A. Yes, sir.

[fol. 154] Q. Where did you call from?

A. From the Daily News office.

Q. And was there anybody present when you made that telephone call?

A. Yes, there was.

Q. Who was present?

A. Mr. Godby, Mr. Fitzgerald, Mr. Connelly and Mr. Dewell.

Q. Did you have a conversation with Rice prior to this telephone conversation about counterfeit money?

Mr. Kamber: I object to the form of the question.

The Court: Overruled.

Mr. Kamber: I take an exception. I also ask the District Attorney to give me the date, if he can.

The Court: Let him go ahead and ask his questions.

Q. Let me start again. Will you tell me everything that you said over the telephone to Rice and what he said to you when you arranged the appointment to meet at Roth's Restaurant?

A. I just told him, "Meet me at Roth's,"—I wanted to see him,—"and bring a large bottle of ginger ale."

Q. Did that have any specific meaning between you and Mr. Rice?

Mr. Kambler: I object on the ground it is incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Kamber: And calling for the operation of the mind.

[fol. 155] The Court: Overruled.

Mr. Kamber: I take an exception.

Q. Did it?

A. Yes, sir.

Q. What did it mean?

A. A large bill.

Q. What large bill, what do you mean?

A. A $100 bill.

Q. When Rice——

The Court: Wait a minute. How do you know it had that meaning to Rice?

The Witness: We had agreed when I spoke not to mention money on the 'phone.

Q. You had agreed when you spoke on the telephone not to mention money, but to say "A large bottle of Ginger Ale" for a counterfeit $100 bill?

A. I did not exactly say "A large bottle of Ginger Ale," but that is the expression I used.

Q. When he came to Roth's Restaurant did he bring a large bottle of Ginger Ale?

A. No, sir.

Q. When was this time that you met him in Roth's Restaurant?

A. Sometime in January.

Q. Was it early or late in January?

A. Around the middle of January.

Q. Now, before you met Mr. Rice in Roth's Restaurant had you met any other of the defendants?

A. Yes sir.

Q. Let me take you back to November 15th; when you came out of Sing Sing, around November 15th, as you say, which of these defendants, if any, did you know?

A. I met Berger and I met Jones.

[fol. 156] Q. And the female defendants?

A. Right.

Q. One of them was your wife; you knew her?

A. Yes, sir, sure.

Q. That is Mrs. Katz?

A. Yes, sir.

Q. And the other two ladies, did you know them?

A. I met them in the Wellington Hotel.

Q. When did you meet them?

A. Around December 10th or 12th.

Q. Which of the ladies did you meet first?

A. I met them both at the same time.

Q. Miss Talle or Miss Molnar?

A. I met them both in the room at the same time.

Q. Whose room was it you met them in?

A. It belonged to three girls in the Wellington Hotel.

Q. Were these two girls also living in the room?

A. Yes.

Q. And still a third girl?

A. Yes, sir.

Q. Can you tell me what the occasion of meeting these two girls was?

A. No special occasion. I knew the other girl from Philadelphia and she invited me up there.

Q. You knew the third girl?

A. Yes, sir.

Q. When you visited them at their room or apartment in the Wellington Hotel was your wife with you the first time?

A. No, she was not.

Q. You went there alone?

A. Yes.

Q. Subsequently did your wife join you in your visits to the Wellington Hotel?

Mr. Siegel: Objected to.

Mr. Singer: This is not offered against the wife.

[fol. 157] Mr. Siegel: Objected to just ahe same, as incompetent, irrelevant and immaterial.

The Court: It does not bind the wife at all. I do not know what it leads up to, but it does not bind her.

Mr. Siegel: Exception.

Q. Did you answer that?

A. I did not yet.

(Question repeated by the reporter.)

A. Not to that room.

Q. I did not hear you.

A. Not to that room.

Q. Did you go to any other place with your wife where the two defendants, Talle and the other lady, lived?

A. Yes.

Mr. Siegel: Objected to.

The Court: It does not bind the wife.

Mr. Siegel: Exception.

Q. Where was that?

A. The Park Vendome Apartment, 350 West 57th Street.

Q. You mean the two female defendants other than your wife had changed their place of residence?

A. Yes, moved to the Park Vendome.

Q. How many times would you say you met Berger up at the apartment on West 57th Street?

The Court: Met who?

Mr. Singer: The defendant Berger.

A. About—well, one week he was there four days, and another week he would be there three or five days.

[fol. 158] Q. You would meet him frequently?

A. Yes, sir.

Q. Did you ever talk to Berger?

A. Yes, I did.

Q. Did you ever talk to him about counterfeit money?

A. He spoke to me first about the money.

Q. When was that first conversation?

A. It was around sometime in December, the latter part.

Q. Before New Year's or after Christmas—before Christmas or before New Year's?

A. I think it was before Christmas.

Q. Who was present when Berger talked to you about counterfeit money?

A. He had another boy friend of his there.

Q. That other boy friend, as you describe him, is not in court?

A. He is not in court.

Q. Now tell me, will you please, what Berger said and what you said about counterfeit money?

A. He said that one of the girls told him that I had counterfeit money, one of the girls who is not in the court room at the present time. She was discharged on this charge. He asked me to show him one of the bills. I got one of the $100 bills and showed it to him. He said they looked pretty good. The next thing I knew I was introduced to Jones.

Q. Who was present when you were introduced to Jones?

A. The two girls.

Q. Which two girls?

A. Miss Talle and Miss Molnar. I am not quite sure, but I think my wife was there.

[fol. 159] The Court: The jury will disregard whether she was there or not. It does not bind her.

Q. Was Berger there?

A. Yes.

Q. Was Jones there?

A. Yes.

Q. Where were you introduced to Jones?

A. At Miss Talle's apartment.

Q. Can you fix this time as before New Year's or after New Year's?

A. This was before New Year's.

Q. What happened when you were introduced to Jones?

A. He asked me if I could give him a few of the bills.

Q. Who asked you?

A. Jones. I called Berger and told him I did not know the fellow, and asked what type fellow he was, I did not want to take a chance to give him the bills in case of a fall.

Q. By "fall" you mean get arrested?

A. Yes. He said he was O.K., not to worry about it, the fellow would never say anything. I spoke to him and he said he would pass them in the hockey games in Madison Square, he could get rid of them on the bookies there.

Q. The people who take bets?

A. Yes, and I made an arrangement the following day to get a few bills. I brought up four of the bills and gave them to Berger.

Q. You gave the four bills to Berger?

A. Yes.

Q. If I understand you correctly, you made the agreement the night before, but you delivered the bills the fol- [fol. 160] lowing night, is that correct?

A. Yes, that is right.

Q. Did Jones come back to the apartment the second night?

A. Yes, he called on the 'phone first and came back the following night.

Q. Was Berger there the following night?

A. Yes.

Q. And the girls were there the second night?

A. Yes.

Q. State what happened.

A. We went into the bath room and I gave Berger the bills. I told him I did not want to hand them to Jones.

The Court: How many?

The Witness: Four.

The Court: $100 bills?

The Witness: Four $100 bills.

Q. Incidentally, from whom did you receive those $100 bills?

A. I had already received them from Rice. He gave the bills to Jones, and I got $100.

Q. Who gave you the $100?

A. Berger.

Q. Did you see Berger get the money from anybody else?

A. We were in the other room, in the bath room. I did not see him get it from anybody else.

Q. Was there any talk about counterfeit money and a transaction about counterfeit money in the presence of the girls?

A. We had conversations up there about it, yes.

Mr. Kroopff: I move to strike that out as not responsive.

[fol. 161] The Court: Denied.

Mr. Kroopff: Exception.

Q. Tell me what was said about the counterfeit money when the girls were present?

Mr. Siegel: I do not know what he means by "girls."

Mr. Singer: The other two defendants, other than Katz.

The Court: Molnar and Seigal.

Q. Tell me what was said.

A. Just a casual conversation about the bills; that is all.

Q. You say a casual conversation. Did anybody show the counterfeit bills to the two ladies?

Mr. Kroopff: I object and ask that the District Attorney be directed not to lead in that matter, on something that is as vital as this is, a particular conversation.

The Court: He asked whether a certain act took place. The answer is yes or no. It is not leading. He may refresh him.

Mr. Kroopff: I except.

Mr. O'Neill: I except too.

(Question repeated by the reporter.)

Mr. O'Neill: I again object. That is clearly a suggestion for his testimony.

The Court: He is trying to refresh him. I will let him

answer. You ought to ask questions that are a little wider.
[fol. 162] Mr. Singer: I will withdraw the question.

Q. Tell me everything that happened.

The Court: What did the women—what part did the women take? Let us hear what they did. Tell us if they did anything or said anything, what did they say or what did they do?

The Witness: I do not remember exactly what they said or done. It all happened in the apartment there, and I cannot recall.

The Court: Did the women have the money at all?

The Witness: I believe they did.

Mr. Kroopff: I move to strike that out.

The Court: Strike it out.

(To the witness): Did they or did they not?

The Witness: Yes, they had it in their hand and looked at them.

Mr. Kroopff: May I respectfully except on the ground that the original answer was that he believed they had it, and your Honor then put the question to him directly and under circumstances which called for a response in the affirmative.

The Court: You already had your exception.

Mr. Kroopff: I now move to strike the answer.

The Court: And your motion is denied and you may have another exception.

[fol. 163] Mr. O'Neill: I save the same exception.

The Court: You have the same ruling and the same exception.

Q. By the women, whom do you mean?

A. Miss Talle and Miss Molnar.

Q. You say Jones called you on the telephone before he came up the second time?

A. He did not speak to me on the 'phone.

Q. Whom did he speak to?

A. He spoke to one of the girls.

Q. Do you know which one of the girls it was?

A. I think——

Mr. Crooks: I object.

The Court: No matter what you think.

A. I am not sure which of the girls.

Q. Later on one of the girls told you about the telephone call?

Mr. Kroopff: I object to that question.

Mr. O'Neill: I object to that question.

The Court: You see, Mr. Singer, you can ask him another way.

Mr. Singer: You cannot press a button; he is not a telephone, he is a human being.

The Court: Well——

Mr. O'Neill: Now, your Honor——

The Court: Do you want to interrupt me? You have an [fol. 164] objection and exception. Ask your questions broader.

Mr. O'Neill: I beg of your Honor to keep in mind this man is under a promise of immunity.

The Court: Will you pardon me? You are out of order. I have already ruled and already instructed Mr. Singer, and there is no reason for your making a speech.

Q. The second time that you saw Jones was the day after you first saw him, is that correct?

A. Right.

Q. Where did you see him the second time?

A. At the apartment.

Q. By the apartment——

A. Park Vendome, Miss Talle's apartment.

Q. What time did you get up to that apartment the second day—on the day when Jones came the second time?

A. I got there about six o'clock.

Q. Did you have a talk with anybody when you came in?

A. I spoke to the girls there, yes, sir.

Q. What did they say to you?

A. They told me that Jones——

Mr. Kroopff: I object to the form of the question. You may not bind all the girls in a question, "What did they say?"

Let us get it specific. We cannot let him throw them in together.

The Court: Tell what each one said.

[fol. 165] Q. Were there two girls present or one?

A. The whole three, Miss Talle, Miss Molnar and Miss Wishnu.

Q. There was a third girl?

A. Yes.

The Court: She is not here?

The Witness: No.

Mr. O'Neill: Why not?

Mr. Singer: If you want to know why not, I will tell you.

The Court: Please stop, and do not make any more such remarks. Whoever made it was out of order. I do not want it repeated.

Q. Do you remember which girl you spoke to?

A. I spoke to Miss Wishnu.

Q. Were the other girls present?

A. Yes.

Q. What did Miss Wishnu say?

A. She asked me if I could get one of the bills, she wants to get a coat out.

Q. What else was said?

A. And that Jones had called up and would be——

Mr. Crooks: I object, not binding on Jones.

The Court: That depends whether it is found there was a conspiracy and she was part of it. If there was, it is binding.

A. Told me Jones was calling that night for the money, and I waited around there until he came for it. Meanwhile, Berger had called in the apartment.

Q. Had called the apartment?

A. Had called in the apartment, had visited.

[fol. 166] Q. He came up?

A. Yes.

Q. How many bills did you give Berber?

A. Four.

Q. I show you Government's Exhibits 1 and 2 for identification. Look at them, please. Have you ever seen those bills before?

A. Yes.

Q. From whom did you receive those bills?

A. From Rice.

Q. And whom did you give those bills to?

A. I gave them to Berger.

The Court: What exhibits are those?

Mr. Singer: Government's Exhibits 1 and 2 for identification.

Q. And did you see what Berger did with these two bills?

A. Yes; Jones got them.

Q. What is Berger's first name?

A. Harry.

Q. Harry?

A. Yes, sir.

Q. Now let me direct your attention to a date sometime in December of last year. Did you ever go any wheres with Rice?

A. December last year?

Q. December or January, December of last year, or January of this year, December of last year?

A. No.

Q. Did you ever come to Brooklyn with Rice?

A. Yes.

Q. Now tell me about the time you came to Brooklyn with Rice.

A. I had called up Mrs. Piccione regarding a sale of a ring.

Mr. Kamber: I object. That is not responsive to his question. He did not ask about calling anybody.

[fol. 167] The Court: He asked him when. When was it?

Q. When did you do this?

A. I think it was four or five days before Christmas.

Q. Four or five days before Christmas last year?

A. Yes, sir.

Q. Before you came to Brooklyn did you do anything?

A. I called up a woman in Brooklyn, yes, sir.

Q. Before you called up had you looked at a newspaper and looked at an advertisement?

A. Yes.

Mr. Kamber: I object to that. That is not proper.

The Court: Ask him what he did before.

Mr. Singer: All right, make it primary-like. We are going to kindergarten.

The Court: Please get down to it and stop this.

Q. Before you went what did you do?

A. Looked up the ad column in the New York Telegram and saw a woman had a diamond for sale.

Q. What was the name of the woman?

A. Piccione.

Q. And where did she live?

A. Elkon Avenue.

Q. Brooklyn?

A. Yes, sir.

Q. What did you do, call her?

A. Called her on the 'phone regarding the sale of the ring and made an appointment with her.

Q. What did she say over the telephone and what did [fol. 168] you say about the ring, about the price of it?

Mr. Kamber: I object, incompetent, irrelevant and immaterial, what he said to the woman and what the woman said to him.

The Court: No, if there is a conspiracy established, the declaration of one conspirator would bind the others. If no conspiracy is established, it would not bind anybody but himself.

Mr. Kamber: Now, your Honor——

The Court: Do you want to argue or take an exception?

Mr. Kamber: I take an exception.

Q. What did you say to her and she say to you?

A. I told her I was interested in the ring, and she made an appointment for me to come over there, that was twelve o'clock we was supposed to be there. It was Saturday. I did not get there until about ten minutes to one.

Q. Did you go alone?

A. No, Rice was with me. We got in the cab and went over.

Q. When you got to Elkon Street or Place, or whatever it was, in Brooklyn, did you go up into the apartment?

A. Yes, sir.

Q. You went up yourself?

A. No, Rice went up first and I went up a few minutes later.

Q. Who talked to the lady?

A. We both did.

Q. Who bought the ring?

A. I did.

Q. Who paid the money?

A. I did.

Q. Was Mr. Rice there with you?

A. Yes, sir.

[fol. 169] Q. How did you pay the lady, with what kind of currency?

A. $20 bills.

Q. Were they good or bad?

A. They were bad, but one bill was good.

Q. Was this your own money you paid, or did you get the money from somebody else?

A. The $20 bills I got from Rice, but the $5 was out of my pocket.

Q. Did you say all the twenties were bad except one?

A. The five was good.

Q. All the twenties were counterfeit?

A. Yes.

Q. And you got the twenties from whom?

A. Rice.

Q. Where did he give you the bills?

A. In the office.

Q. The office where?

A. Longacre Building.

Q. And Rice came right to Brooklyn with you?

A. Yes, sir.

Q. I show you these bills, Government's Exhibit 4 for identification, and ask you to look at them and tell me whether you ever saw those bills before?

A. Yes, those are the bills.

Q. Are those the bills you gave Mrs. Piccione?

A. Yes.

Q. Who got the ring?

A. Rice.

Q. Where did you give him the ring?

A. Up in his office.

Q. Did you have any talk with Rice at that time or later about that ring?

A. I told him to get rid of it right away, that I needed some money, and there was a man up there, a man came up a few minutes later, a man called Phil. He looked at the [fol. 170] ring and he gave us $100 down, and said he would give us the other $100 later, and he went to sell the ring, and the same night I came back and I found out——

Q. Who told you?

A. Rice. I asked did the fellow come back with the money. He said something happened, that the fellow took the man it belonged to.

Q. Rice told you that?

A. Yes.

Q. Now, Mr. Katz, yesterday when I asked you how many times you had been convicted you told me you had only been convicted once in Philadelphia of petty larceny, once in New York for attempted robbery, is that correct?

A. No, attempted forgery.

Q. Now, as a matter of fact, you were convicted under another name, Jack Pearce, were you not?

A. No, I was never convicted under no other name.

Mr. Singer: Let me have that paper, please, Mr. Kamber.

Mr. Kamber: I subpœnaed it for the purpose of cross-examination, and I am not going to let him have it now. I subpœnaed it. I will get out how many times he was convicted.

Mr. Singer: May I have it, your Honor?

The Court: I do not control it.

Mr. Singer: Will you get it back, Mr. Officer?

Mr. Kroopff: May I be heard a moment? If he intends [fol. 171] to impeach him and brand him as a liar, we will take the concession.

Mr. Singer: I do not brand anybody. I want his whole record. That is my job.

The Court: I haven't got it.

Mr. Singer: You refuse to give it to me, Mr. Kamber?

Mr. Kamber: I refuse to give it to you.

Mr. Singer: In other words, you do not want the jury——

The Court: Never mind.

(Gentleman who brought the paper under subpœna: He asked me to loan him the record.)

Mr. Singer: Take it back from him.

The Court: I do not control it. It never was in my custody or the custody of this court.

Mr. Singer: It is not in the custody of the counsel.

The Gentleman Who Brought Paper Under Subpœna: It was just loaned to him. May I have the record?

Mr. Kamber: No, I have to use it for my purpose. I submit to your Honor——

The Court: Go on, Mr. Singer. What is the use?

Mr. Singer: I want the record.

The Court: I am not in control of the record, and have nothing to do with it. This is disgraceful. Go on. This is your witness, and you cannot impeach your own witness.

[fol. 172] Mr. Singer: I am not impeaching him.

The Court: If they want to do it, let them do it later on.

Mr. Singer: All right. Sit down, Officer.

Q. Katz, I have seen a fingerprint record, or I have heard of one this morning, which shows an arrest or a conviction for some offense other than what you told me, somewhere in Pennsylvania or Atlantic City.

A. I was arrested in Atlantic City under the name of Jack Pearce, but was not convicted. I got a suspended sentence.

Mr. O'Neill: Not what he heard.

The Court: The witness is telling what happened.

Q. You say you got a suspended sentence in Atlantic City?

A. Yes.

Q. You do not call that a conviction?

A. It is not a conviction because it did not count when I was called as a second offender.

Q. Did you get a suspended sentence anywhere else?

A. Yes, I had quite a few suspended sentences, but I was not convicted.

Q. Tell me about the suspended sentences. We should know about that too.

The Court: He may be technically correct.

[fol. 173] A. I will give you my record and save them the trouble. I was arrested in every city, but not convicted.

Q. You are not trying to hide anything at all?

A. I am not hiding, no.

Cross-examination.

By Mr. Kamber:

Q. Still chewing?

Mr. Singer: Proceed to handle the witness as any other witness.

The Court: What is all the talk? I have not heard it. I thought you were addressing conversations to me. Go ahead, Mr. Kamber, and make no remarks after he answers.

Q. Did you stay in jail last night?
A. Yes.
Q. What jail?
A. I refuse to answer.
Q. Why do you refuse to answer?
A. Why?
Q. Because it is going to incriminate you?
A. It may, yes.
Q. That is, where you stayed last night?

Mr. Kamber: I ask the Court to direct you to answer where you stayed last night.
The Court: Tell him where you were last night.
The Witness: Raymond Street Jail.

Q. Is that where you were?
A. Yes, sir.
Q. Now, how many times have you given your story to the District Attorney?
A. Once.
[fol. 174] Q. Did you give him a story when you were first arrested?
A. No.
Q. Upstairs on the fifth floor?
A. When I was arraigned before the Commissioner, yes, sir.
Q. Before that did you give your story to Mr. Singer?
A. Yes, sir.
Q. And did he take down by a stenographer,—did a stenographer take down your statement?
A. I do not believe she did.
Q. Did you sign anything?
A. For Mr. Singer?
Q. For anybody that day.
A. No, not that day, no.
Q. Did you make any statement to Mr. Singer yesterday morning in his office when your counsel, Mr. Wackerman, was there?
A. Yes, I was up there.
Q. And you started to bargain with Mr. Singer, did you

not, as to what you were going to get for the testimony you are giving here?

A. I would not call it bargaining, no.

Q. You tried to get a price for what you were going to testify here?

Mr. Singer: Do you mean money?

Mr. Kamber: If you have an objection, I ask that you make it to the Court. Do not address me at all.

Mr. Singer: I have a right to know what you mean. Do you mean to ask this man whether he was going to get money to testify? Price means money to me. It may mean it to him.

[fol. 175] Mr. Kamber: It might mean something else. You would not give him a quarter, neither would the Government.

Mr. Singer: That is straightened out.

Q. I use the word "price" again.

Mr. Singer: I think he should ask the witness in understandable language.

The Court: The word "price" is a very inclusive one. If there is a question of money, he should be directed to it; if not, is he to receive immunity?

Mr. Kamber: I understand that to mean the word "price."

The Court: "Price" is too inclusive. Make it plain.

Q. Then you discussed the matter between you and Mr. Singer yesterday morning, and then you came down here, didn't you?

A. Yes, sir.

Q. Mr. Singer and you discussed the matter of your indictment?

A. He discussed it with my counsel appointed by the Court.

Q. And you were present?

A. Yes, sir.

Q. And under this indictment you have been indicted for six or seven substantive crimes, that is, having in your possession——

Mr. Singer: Make it specific, eight substantive crimes.

Q. Eight?

Mr. Singer: Yes.

[fol. 176] Q. Those eight offenses, using Mr. Singer's word, and you knew—— (withdrawn).

Q. And there would be a substantial sentence if you pleaded guilty to all that? You expected that, didn't you?

A. I do not know what I expected.

Q. You know for a crime of that kind you can get five or ten years by the Court?

A. I suppose; I do not know.

Q. Don't you know for these eight offenses you could get at least five years on each count?

A. I was not acquainted with the Federal law.

Mr. Singer: He can get 15 years on each count, so there is no question about it.

Q. So eight times fifteen would be 120 years you could have gotten under this indictment?

Mr. Singer: Plus two years for conspiracy.

Q. I forgot that, two years for conspiracy. That is 122 years?

A. Yes.

Mr. Singer: And $50,000 fine.

Q. $50,00- fine. Let us have it all on the record. You stood to get 122 years and a fine of $50,000. I am going to take the word of Mr. Singer. You did not know that?

A. No.

Q. But you knew you could get a substantial sentence on these various offenses charged in this indictment?

A. I suppose so.

[fol. 177] Q. Now, before you said a single solitary word, or were ready to testify, you and your attorney made a deal that the most that you could get under this indictment was two years; you knew that, didn't you?

A. Yes, according to conspiracy.

Q. That is, in other words, you would not say a word and you would not agree to say a word unless you made a deal with the District Attorney that instead of being chargeable with seven offenses and getting 142 years, whatever you were to get, all you were to get was to plead guilty to this charge of conspiracy, and all the Court could give you would be a two-year sentence and a fine, I believe, of $10,000 —I may be wrong, Judge,—is that correct?

A. No, it is not true.

Q. You agreed in consideration of Mr. Singer——

A. I did not agree anything with Mr. Singer. I took the advice of counsel to take the plea.

Q. So under the advice of counsel, you were there, Mr. Singer agreed that he would direct the Court to nolle prosse, or throw out, all the counts in the indictment, which the Court has to do as a matter of fact upon the motion of the District Attorney, and all it would leave you to be charged with, which you were going to plead guilty to, would be conspiracy, for which, at the most, the Court can give you two years and $10,000 fine?

A. Yes.

Q. Then you came down here and were prepared to put everybody in the picture, isn't that right?

A. No.

[fol. 178] Q. What?

A. No.

Q. Now, of course, you also wanted to plead guilty here once before, and because you did not have counsel, which was very proper——

A. That is right.

Q. (continuing:) —you wanted to plead guilty and you did not have counsel, and the Court very properly said he would not accept your plea, that you were to have counsel, is that correct?

A. That is correct.

Q. So at no time, and that was two or three weeks ago, or two weeks ago,——

A. Two weeks ago.

Q. Now, Katz, when Mr. Singer asked you how many times you were convicted, at least how many times you were convicted, you told him two or three times, I do not remember; you knew you were not telling the truth?

A. I was telling the truth.

Q. See how much truth you told.

Mr. Kamber: Here is this record, you can see it now, Mr. Singer.

Q. Is this your picture—was this picture ever taken of you?

A. Yes.

Q. How many years ago?

A. The date is right on the picture there.

Mr. Kamber: I am going to offer it in evidence.

Mr. Singer: You cannot offer it. The witness' photograph has nothing to do with the case.

[fol. 179] The Court: It may go to his credibility.

Mr. Singer: He has admitted this.

The Court: I do not know. He has not offered it yet.

Mr. Singer: No, he hasn't. He is looking at it.

Q. Under what circumstances, if you know, was this picture taken, and where was it taken?

A. I do not know. I believe it was taken in New York City.

Q. Under what circumstances was it taken?

A. I could not tell you by that picture. I have had quite a few pictures taken down there.

Q. Under what circumstances were these pictures taken?

A. Let me see the date. I might be able to tell you. (Picture handed to witness.) That is when I was arrested for carrying a piece of celluloid and discharged.

The Court: Unless it followed a conviction it is not admissible, because you cannot impeach him by an arrest. You impeach him by a conviction. If the picture was taken when he was arrested and there was no conviction, you cannot impeach him.

Mr. Kamber: The point is this, if your Honor pleases——

Mr. Singer: Without reading from that paper.

The Court: Let us get it plain so there will be no confusion. If that picture was taken after a conviction, all [fol. 180] right. If the picture was taken simply after arrest and there was no conviction, it is no evidence here, because an arrest does not impeach him.

Mr. Kroopff: May I suggest the District Attorney opened the door.

The Court: He asked him about being arrested.

Mr. Kroopff: Many times——

The Court: That is all right, but still you do not impeach him by that. Arrest is a different thing.

Mr. Kroopff: May I except, your Honor?

The Court: You may. You never have to ask for it, just state it.

Mr. Kamber: I will offer this picture for identification for the time being.

The Court: All right. May it be marked or is it a public record?

Mr. Kamber: Public record.

Mr. Singer: Mark it on a slip A.

(Marked Defendants' Exhibit A for identification.)

Q. Now, Katz, were you arrested in——

Mr. Singer: I object to it.

The Court: If you do not follow it up, the mere fact of an arrest does not mean anything.

Mr. Singer: You ask if he was convicted.

[fol. 181] The Court: I told you two or three times.

Mr. Kamber: I withdraw it.

Q. Were you convicted of larceny at Atlantic City in 1921?

A. No, sir.

Q. And was sentence suspended?

A. That is right.

Q. So you were convicted of larceny in Atlantic City.

A. A suspended sentenc- is not a conviction in New Jersey County.

Mr. Kamber: If your Honor pleases,—

The Court: Let me look at your paper. If I have the paper I will look at it and pass on it, but in this State, where there is no sentence, or only a suspended sentence, there is no sentence. He probably is right technically in his statement. Where there is a suspension of execution of sentence there is a conviction. Where no sentence is imposed and there is a suspension of sentence, there is no judgment of conviction under the laws of this State, so he may be technically correct.

Q. Mr. Katz, in 1923 were you sentenced to an indefinite term——

Mr. Kamber: Mr. Singer, if you want to look at this, I will let you have it.

Mr. Singer: I want to see what he is reading.

Mr. Kamber: You know me long enough. I won't read anything that is wrong.

[fol. 182] Mr. Singer: The paper does not belong to him. I want to look at it.

The Court: It is not the way to try the case. Please take a seat. One at a time.

Mr. Singer: As a matter of fact, Mr. Kamber asked me to come up and look at it, and I will have the record read back.

The Court: Now he says don't look at it.

Mr. Singer: Does he withdraw his invitation?

The Court: He has, and I have invited you to take a seat. That is the last invitation. Now, Mr. Kamber, let us get to business.

Q. In 1923, Harry J. Katz were you convicted in Atlantic County, New Jersey, for the crime of grand larceny, and did you get an indefinite term in Rahway, New Jersey, State Penitentiary?

A. No, sir, I received a suspended sentence by Judge Ingersoll.

Q. No. 7543?

A. I do not remember numbers.

Q. In 1925—I beg your pardon, I take it back under your Honor's ruling—in 1927, as Jack Pearce, were you arrested and convicted for grand larceny at Holmesburg, Pennsylvania, and sentenced to one year?

A. That is correct, yes.

Q. Now, in 1926, as Harry Katz, were you arrested for forgery in Los Angeles, and got a probation of three years?

A. No, sir, I got a suspended sentence in Hollywood, [fol. 183] not Los Angeles.

Q. Now, in 1929, as Jack Katz, were you arrested for forgery?

A. Yes, and I went to Sing Sing for that.

Q. You went to Sing Sing for five years, State Prison, sentence by Judge Rosalsky?

A. Yes, sir.

Q. How long did you serve in Sing Sing?

A. Three years and nine months.

Q. Under what circumstances were you returned to Sing Sing, if you know?

A. Violation of parole.

Q. Was the violation of parole that you had "burglar's" tools?

A. No, sir.

Q. Was the violation of parole that you were charged with unlawful entry and burglar's tools?

A. No, sir.

Q. So you began your criminal career evidently sometime in 1921?

The Court: Is that a question or a statement?

Q. Is it so? When did you begin your criminal career?

A. I would not call it a career.

Q. Well, it is your career, you began your criminal career in 1921?

A. I still would not call it a career.

Q. You became a criminal in 1921?

A. I might have committed crimes, yes.

Q. 1921?

A. I do not remember what date.

Q. And up to 1933, approximately, is that right?

A. Yes, sir.

[fol. 184] Q. So that for twelve years, more or less, you have committed, as you testified to on direct examination, a lot of crimes in every city in the United States?

Mr. Singer: He never said so.

A. I did not say crimes.

Q. In every city in the United States you were picked up, as you testified to Mr. Singer?

A. You can have it that way.

Q. For an alleged crime that they charged you with?

A. No; I was not always charged with a crime.

Q. Now, when you got out of Sing Sing you went back to Sing Sing by reason of a violation of your parole?

A. That is right.

Q. Of course, you were just picked up, you had not committed any offense at all?

A. My violation of parole was for leaving the State. My parole officer will verify that.

Q. And you again say it was not for having burglary tools?

A. No.

Q. Having burglary tools in your possession?

A. I had no burglary tools in my possession. It was proven before Judge Martin.

Q. It was proven before Judge Martin that you did not have burglary tools?

A. Yes.

Q. So you were charged with it?

A. I was charged with it.

Q. By Judge Martin you mean over here in Brooklyn?

A. Yes, that is right.

Q. And right after that you were taken back to Sing [fol. 185] Sing, is that right?

A. No, not right after that.

Q. Immediately thereafter, not after that?

A. Say a week later.

Q. From Judge Martin's court you were put in the jail down here in Raymond Street, were you?

Mr. Singer: I do not want to object, but Mr. Kamber knows a violation of parole is not a crime.

Mr. Kamber: I do not know.

The Court: You have it all, that he went back. What difference does it make where he was? It makes no difference whether he was in jail. He went back to Sing Sing. It was answered four times.

Mr. Singer: And he went back to Sing Sing—he went back to Sing Sing. I will tell you a few more times.

Q. Now you say, Katz, that you did not know Rice at all until he was introduced to you by the other defendant, Lee?

A. That is right.

Q. Now, of course, you are not very friendly with Rice, are you?

A. I do not know what you mean by that.

Q. Well, you do not feel kindly toward him, do you?

A. I have nothing against him.

Q. You have nothing against him?

A. No.

Q. Now you want to tell the jury you feel very kindly toward Rice?

Mr. Singer: I object to that.

The Court: He has answered you.

[fol. 186] Q. You feel that Rice is a friend of yours, don't you?

A. I do not feel so now, no.

Q. When did you get that feeling that he was not a friend of yours? Right after your arrest?

A. No.

Q. When did you first get that he was not a friend of yours?

A. I never had that feeling.

Q. You never had the feeling what?

A. That he was a friend of mine or was not.

Q. You said a minute ago you do not think so now.

A. Well, I have the privilege of thinking, haven't I?

The Court: Wait a minute. You have the privilege of answering questions respectfully too.

Q. You said a minute ago you did not think you were a friend of Rice at this time. Were you a friend of Rice at any time?

A. Yes, sir, sure.

Q. And did you visit with him?

A. Yes, sir.

Q. Did your wife visit with you with him?

A. Yes, sir.

Q. And you went out to lunch with him, didn't you?

A. I did.

Q. And your wife went out to lunch with him?

A. Yes.

Q. And you played cards with him?

A. I do not think I ever played cards with him.

The Court: Speak up a little louder.

Mr. Kamber: I will stand over here.

[fol. 187] The Court: Stand back, because the jury wants to hear.

Q. And when you and your wife disagreed from time to time——

Mr. Siegel: This is objected to.

Mr. Kamber: Withdrawn, pardon me.

Q. You used the good offices of Mr. Rice to get your wife to live back with you, didn't you?

Mr. Siegel: Objected to.

The Court: I cannot tell. If it is to show the relationship between himself and Rice.

Mr. Kamber: That is the purpose.

Mr. Siegel: I object to it anyhow.

The Court: Mrs. Katz is not bound by anything he says, but Rice it.

Mr. Siegel: Exception.

A. No, I never tried to get her to come back to me. Do you want the answer to that?

The Court: That is the answer. You answered.

Q. Now, you testified, as I understand it,—

Mr. Kamber: I withdraw that for the time being.

Q. When you were arrested did you or did you not want [fol. 188] to get out on bail?

A. When I was arrested this time?

Q. Yes?

A. I could not get bail because I had a parole warrant on me.

Q. Is it not a fact that you said you wanted to stay in jail because you were afraid if you went out somebody would kill you?

A. No, I never made such a remark.

Q. Did you know—— (withdrawn).

Q. You got, you say, the $100 bill from Rice?

A. Right.

Q. Now. can you tell me specifically when the first time was that you got any money from Rice?

A. A few days after I came out of Sing Sing.

Q. Two days after?

A. A few days. I do not know the exact date.

Q. When did you come out of Sing Sing, do you remember the date?

A. November 15th.

Q. November 15th, 1933?

A. Right.

Q. And a few days afterwards—and how much in money did you get from Rice?

A. In counterfeit bills?

Q. Did you get any cash other than the counterfeit bills?

A. Yes, sure.

Q. How much did you get?

A. My share.

The Court: Which do you want?

Q. I want first the real money.

A. I do not remember the exact amount. Whatever I brought back I got my share.

Mr. Kamber: I move to strike that out.

[fol. 189] Q. You said you got two kinds of money, good money, I take it, and counterfeit money?

A. Right.

Q. Two or three days after you got out from Sing Sing. How much money did you get in good money?

A. I could not tell you the exact amount.

Q. $100.

A. Perhaps about that much.

Q. You got $100 in good money, and that was three days after you got out of Sing Sing?

A. No, I did not get the $100 at once. I am talking of the whole total amount.

Q. I will withdraw that question and ask you this: Three days after you got out of Sing Sing, Rice handed you some counterfeit bills, is that right?

A. Right.

Q. How many bills did he hand you?

A. I think it was three twenties at first.

Q. And that was in November of 1933?

A. Yes, sir.

Q. Now, of course, you did not inquire from Rice where he got the three twenties, did you?

A. No.

Q. You had just got out of Sing Sing and you were prepared to pass these counterfeit bills?

A. For a reason, yes, sir.

Q. Well, you were prepared to pass these counterfeit bills, you knew they were counterfeit bills?

A. Yes, after it was laid on the table and explained to me what was what, sure.

Q. You could see they were counterfeit bills?

A. Yes.

Q. They were laid on the table?

A. Not laid on the table.

[fol. 190] Q. Where were they laid?

A. In a safe he had.

Q. Well, he took them out of the safe, didn't he?
A. Yes.
Q. Took them right out of his safe and he handed them to you and said they were counterfeit bills?
A. Well, we had a conversation before that.
Q. But he said they were counterfeit bills?
A. Yes.
Q. And that was up in his office, you say?
A. Right.
Q. Does he employ anybody at his office, do you know?
A. Yes.
Q. This man Lee was working there, wasn't he?
A. He was.
Q. Somebody else was working there?
A. Yes.
Q. What was the name of that man?
A. His first name is Phil.
Q. And it is an office in an office building at 42nd Street and Broadway, is that right?
A. That is right.
Q. And the door is open, it is not a locked door, people come and go all the time?
A. No, there is a partition in there with a locked door.
Q. A partition up as far as the ceiling?
A. No.
Q. A glass partition?
A. Yes.
Q. Well, he took the three $20 bills out, and you say he gave them to you?
A. Yes.
Q. And you went and passed them?
A. That is right.
Q. Where did you pass them, in New York?
[fol. 191] A. I did not pass the whole three.
Q. How many did you pass?
A. One.
Q. What did you do with the other two twenties?
A. I cannot testify to that.
Q. Why not?
A. The Court directed me that before I took the stand.
Q. I did not hear the Court so direct you. I may be mistaken. What did you do with the other two twenties?
A. I gave them to my wife.

The Court: That is out. The jury will disregard it. It does not bind the wife.

Q. Where were you living at that time, November, 1933?
A. 1972 Walton Avenue.
Q. And you want to tell this jury that while in that office with these men around, that you were handed this money?
A. These men did not see me get the money.
Q. They did not see you get the money?
A. No.
Q. Well, you testified before that four $100 bills were given to you. Where was that given to you?
A. In the office.
Q. Anybody around then?
A. There was people in the office, yes, sir.
Q. You said there were six people in the office?
A. Yes.

The Court: When you say "office" what do you mean?
The Witness: In the Longacre Building.
The Court: You said the office was partitioned. When you say in the office, do you mean they were in the same [fol. 192] room you were in, or in the other room?
The Witness: Three were on one side of the partition, and there might have been three or two on the other side of the partition.

Q. Three were on one side and three on the other?
A. I would not say exactly three split up.
Q. Six people, but you do not know whether three or four were on one side, but there were six people at least in the office at that time?
A. Yes.
Q. What time of the day was that?
A. Before noon time.
Q. Now, on and off, you say you got about ten $100 bills, is that correct?
A. Around that, yes, sir.
Q. And it was always given to you by Rice in that office?
A. Yes.
Q. Always with some people around?
A. Not always, no.
Q. Well, most of the time you mentioned here six people were there?
A. That is on one occasion.

Q. Now, the next occasion how many one hundred dollar bills did you get?

A. Two of them.

Q. When was that?

A. Right before Christmas.

Q. You got two right before Christmas. Were those the two you took home with you where these girls lived?

A. Yes.

[fol. 193] Q. Didn't you, a little while ago, testify you had four bills that you had there?

A. I did, but that is not the two I gave to Berger. That is not the same two. That is a different time.

Q. You had two you were talking about that had nothing to do with the transaction?

A. Nothing to do with that transaction.

Q. You had two and four, that is six, and the four you passed or five you passed for this jewelry. Where did you get the extra $100 bill?

A. The first six hundred dollars *gave* out of Rice.

Q. The first six hundred you passed on the jeweler came out of Rice?

A. Yes.

Q. And the next four?

A. Also came from there.

Q. And when did you get that?

A. Also before Christmas.

Q. Before Christmas?

A. Yes.

Q. So six and four is ten?

A. Right.

Q. Now, you just mentioned two more, didn't you?

A. You did not ask me how many I had altogether.

Q. You said a little while ago you got about ten?

A. Yes, ten before Christmas.

Q. And every time you got—I have already asked you that—And every one of these bills you passed or gave away, is that right, you either passed some of these bills or gave them away?

A. Yes, sure.

Q. Did you sell them?

A. I just sold a few of them.

Q. How many did you sell?

A. Just the four.

Q. Which four?

A. That Jones passed.

[fol. 194] Q. How much did you get for them?

A. $25 apiece.

Q. Now, have we got your story right, that the four you brought home you got $25 apiece for?

A. Yes.

Q. And the rest you passed, is that right?

A. Yes, I passed them on that lawyer.

Q. Now, Katz, isn't it a fact that you are shielding—do not laugh, it is too serious to laugh—that you are shielding the real man from whom you bought or got in some form or other these bills?

A. Absolutely not, no.

Q. And you are trying, in consideration that you are sore at this boy,—and that you are getting him into the picture——

Mr. Singer: Who is the boy?

Mr. Kamber: The defendant. Stand up, Rice.

Mr. Singer: What is he, a boy?

Mr. Kamber: Never mind.

Q. Isn't it a fact you are shielding the real man that you got this money from?

A. You know I am not, Mr. Kamber.

Q. Isn't it a fact you are shielding the real man that you got this money from?

A. Absolutely not. I told you that the day you spoke to me in the D. A.'s office.

Q. And that you are sore at this man for not coming to your assistance in this time, yes or no?

A. No.

Mr. Singer: Who is the man? May I find out too?

[fol. 195] The Court: He indicated——

Mr. Singer: Well, it don't make any difference.

Q. You have not done an honest day's work, have you, in the last eleven years?

A. I certainly have.

Q. That is a fact isn't it?—Wait a minute—And it is a fact, as you testified to in answer to Mr. Singer's question, that you have been in jail from time to time in the last eleven years?

A. I did not answer that question to Mr. Singer at all. I said I was arrested, not in jail.

Q. Arrested for doing nothing?

A. A lot of people get picked up, a man with a record gets picked up.

Mr. Singer: Who cares? We have been all over that.

The Court: We have been all over that. Let us get ahead.

Mr. Kamber: That is all.

Mr. Siegel: On behalf of Ray Smorgan Katz, I move to strike out as against her all of the testimony given by this witness.

The Court: I have instructed the jury to disregard it.

Mr. Siegel: I am making the motion.

The Court: The testimony he gave against Ray Smorgan Katz is stricken out.

Mr. Siegel: Not the testimony he gave against Ray Smorgan Katz. I move to strike out all of the testimony [fol. 196] given by this man as against the defendant Ray Katz.

The Court: I say all his testimony is stricken out in so far as the defendant Ray Smorgan Katz is concerned, but it stands as to the other defendant. There is no question about that, he could not bind her.

Mr. Siegel: Exception.

Cross-examination.

By Mr. O'Neill:

Q. Mr. Katz, do you know me?

A. Yes.

Q. When did you first meet me?

A. I spoke to you in the bull pen one day.

Mr. Singer: "Bull pen," what is that?

The Witness: That is the jail back here.

Q. What was the occasion of your sending for me?

A. Regarding the two girls you are defending.

Q. Now I will ask you presently concerning that conversation. You have no animus against these two girls, have you?

A. No, none whatever.

Q. What was the occasion of your first meeting those two girls, and when was that occasion?

A. Strictly social at the Wellington Hotel.

Q. Who introduced you to these girls?

A. Miss Wishnu.

Q. You knew Miss Wishnu some time prior to your meeting with these girls?

A. That is right.

[fol. 197] Q. Now, you testified that your conversation with Berger concerning these bills took place in the bath room of their room?

A. That is right.

Q. You did not have any conversation with Berger outside of that bath room, isn't that so?

A. Not relating to the bills.

Q. Concerning bills?

A. No.

Q. And when you testified here, you said that you believed they were there all the time. You did not mean that they were there when the bills were being discussed, is that so?

A. They were there on one occasion, yes.

Q. Well, do you remember the occasion when they were there when bills were discussed?

A. They were there on the occasion, but they had nothing to do with the discussion of the bills. That was taken in a different corner of the room entirely.

Q. They did not know anything about these bills, so far as you have any information?

A. They may have; I do not know.

Q. You do not know of anything that connects them with knowledge of these bills?

A. No.

Mr. O'Neill: That is all.

Cross-examination.

By Mr. Hogan:

Q. Mr. Katz, when is the first time after you had left Sing Sing that you had met Mr. Lee?

A. Sometime in March.

Q. You are sure it was in March?

A. Either March or early part of April.

[fol. 198] Q. Wasn't it more in July, summer time of 1933, last year?

A. No, I do not think it was.

Q. Mr. Lee introduced you to Mr. Rice, is that it?

A. That is right.

Q. You had known Lee for some time prior thereto?

A. I did.

Q. You bear no animus toward Mr. Lee, do you?

A. None whatever.

Q. Do you know that Mr. Lee is not an engraver?

A. He is not an engraver.

Q. Do you know what he did up at Rice's office, what his occupation was?

A. I think he took care of the books and records, a clerk.

Q. And acted as a personal clerk, is that right?

A. Right.

Q. Now, on the occasion when you delivered these $600, the six spurious notes, to Mr. Zimmerman, the lawyer, was Mr. Lee present?

A. No, he was not present.

Q. So far as you know, did Lee know anything about these six spurious notes?

A. He did not know anything about them. I went there myself.

Q. When you delivered this $100 counterfeit bill to Dr. Michel's clerk, I think Miss Mary Dalton, did Lee so far as you know, have any knowledge of this spurious note?

A. He did not.

Q. Did you ever personally talk from Roth's Restaurant, at the time you were with the agents and Mr. Godby—did you ever talk to Lee personally over the telephone at Rice's office?

A. No, sir.

Q. You are sure?

A. Sure.

[fol. 199] Q. All of your conversations were between Rice and yourself?

A. That is right.

Q. And this partition which separated the room where there were six people where the money was passed to you, was Lee present when the money was passed to you by Rice, or anyone?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Did Mr. Lee ever give you any money, counterfeit money or spurious money?

A. No.

Q. When this ring that was purchased from Mrs. Piccione, if that is her name, was Mr. Lee present?

A. No, he was not.

Q. Did Lee go to Brooklyn with you?

A. No.

Mr. Hogan: That is all.

Cross-examination.

By Mr. Wegman:

Q. Katz, when did you first go to live at the apartment of those girls, what was the date of that?

A. I think December 26th or 27th.

Q. What was the occasion of your going there?

A. I cannot answer that.

Q. Why not?

A. Because it goes back to my wife again.

Q. Did it have anything to do with counterfeit money?

A. No.

Q. Well, then, proceed to answer it.

Mr. Singer: The witness has a right to refuse to answer that on your Honor's own instruction.

The Court: He said it related to his wife and does not [fol. 200] relate to counterfeit money. He cannot testify against his wife.

Mr. Wegeman: He is not testifying against his wife in reference to this question. It is material.

The Court: He said he went with his wife, and it was not in relation to counterfeit money.

Mr. Wegman: I beg your pardon. He did not say he went with his wife.

The Court: What did you say?

Mr. Wegman: I asked when he went to live at the apartment and he said he could not answer because it related to his wife.

Mr. Siegel: I object to it.

The Court: If you want the date, all right.

Mr. Singer: He gave the date.

The Court: Then that is all. It is of no concern beyond that.

Mr. Wegman: Does your Honor sustain the objection?

The Court: I do sustain the objection.

Mr. Wegman: I respectfully except.

Q. At that time, Katz, according to your story, did Berger know anything about your handling counterfeit money?

A. Yes, he did.

Q. He knew it before you went to live at the girls' apartment?

A. Yes, sir.

Q. How long before did he know about it?

[fol. 201]. A. About a week before.

Q. Didn't you tell us on direct examination that the first transaction that you had in counterfeit money in which Berger had anything to do, according to your story on the witness stand, was after Christmas and just shortly before New Year's?

A. No, I said before Christmas.

Q. Was it before Christmas that you had this deal with Jones?

A. Yes.

Q. And before you were living in that apartment?

A. Yes.

Q. Now, when did you first begin to have your dealings with the Secret Service men as an informer?

A. I never had any dealings as an informer with them.

Q. When did you first go to them and tell them this story of yours?

A. I did not go to the Secret Service about any story.

Q. Did these Secret Service agents go with you to Roth's Grill?

A. Yes, they already had an affidavit signed by my wife. She made out the original complaint.

Mr. Siegel: I move to strike it out.

The Court: I cannot stop him asking questions.

Q. When was this?

A. She made a complaint January 5th.

Mr. Siegel: I move to strike it out.

The Court I will strike it out. It does not have weight against the wife.

Mr. Wegman: May I get the date?

[fol. 202] The Court: Yes, but you keep asking questions about the wife.

Mr. Wegman: I have no interest in Mrs. Katz.

The Court: Ask for dates, otherwise he fixes everything by some event.

Mr. Wegman: You mean he makes up the story as he goes along?

Mr. Singer: The Court does not mean that.

The Court: That remark is improper and the jury will disregard it. Counsel had no right to make such a remark.

The Witness: January 5th.

Q. When did you first inform the Secret Service men you had dealings with Mr. Berger?

A. Sometime in January.

Q. What time in January?

A. Around January 15th, I think.

Q. Was that after Mr. Berger had come up to the apartment of these girls about four o'clock in the morning and found you there with another man?

A. It was after, yes.

Q. It was after that?

A. I think so.

Q. Isn't it a fact, Katz, that while you were in the detention room in this building, after the time when you attempted to plead guilty to all of the counts in this indictment, you had a conversation with Mr. Wasserberger and with Mr. Rappaport?

A. They came over and spoke to me.

Q. You had a conversation?

A. Yes, they came over and spoke to me.

Q. And isn't it a fact you told them at that time that Berger was not mixed up in this thing at all, that he was [fol. 203] absolutely not guilty, and that you were sorry you lied?

A. No; they said to me, "Don't rap him," to say he was not the man. They said, "He is a poor fellow, leave him alone."

Q. You did not tell them you were sorry you lied?

A. No, I never said I lied. They asked me not to rap him.

Q. You know who Mr. Wasserberger and Mr. Rappaport are?

A. That is the first time I saw them that day in the bull pen.

Q. You know Mr. Rappaport is a lawyer?

A. No, I never knew he was a lawyer.

Q. But you stick to your story?

A. I only spoke to one man, with the glasses.

Q. The other man was with him?

A. No, he was not near me. He bent down. There was a disturbance there and he told me to pipe down, "don't listen to Berger, he is a poor fellow with a lot of trouble, and try to keep him out of it," and I told him if he wants to be a wise guy I will tell the truth. That is what I told him.

Q. You are guilty of every count in this indictment, aren't you?

A. I do not know what the counts are.

Q. Did you participate in passing on Mrs. Piccione $320 in counterfeit money, did you participate in that?

A. $325 was the full amount.

Q. I said $320 in counterfeit money.

A. Yes, sir.

Q. And you had counterfeit money in your possession, did you not?

A. Yes, sure.

[fol. 204] Q. And you were the one who provided those counterfeit bills that you identified, being Government's Exhibit 5 and 6 for identification, I believe—may I have them, please—I was wrong about those numbers, I mean Government's Exhibits 1 and 2 for identification? Are you the one who provided those bills?

A. Yes, sir.

Q. Now, Katz, that covers the first eight counts in that indictment, and so, if you did all those things, you admit you committed every one of the crimes listed in those eight counts, do you not?

A. Yes, sure.

Q. Had you told Mr. Singer all about that on the day that you were first brought over for arraignment before the Commissioner and told him the whole story?

A. Yes.

Q. And you had told that to the Secret Service men before you were brought here for arrai-nment?

A. No, I do not tell them.

Q. The first one you told was Mr. Singer?

A. No; they knew about it, but I did not tell them all of it.

Q. Did you admit to Mr. Singer that you had participated in all those offenses?

A. Yes.

Q. You testified before the Grand Jury, didn't you?

A. Yes.

Q. You testified about all those events, did you not?

The Court: One minute.

Mr. Singer: I have no objection.

Q. You testified about all of that?

A. Yes.

Q. Had you made any arrangement with Mr. Singer about [fol. 205] the plea you were to be permitted to take before the time when this case first appeared before Judge Campbell two weeks ago?

A. No.

Q. Do you remember when you attempted to plead guilty Mr. Singer made a statement that he knew you were not guilty of some of those counts? Do you remember that? And he said he had made a promise to you and he wanted to keep it?

A. I do not recall what was said that day.

Mr. Singer: To make the record straight, it is my duty at this time to tell the Court that I did talk to the defendant before that and I had a tentative arrangement which was not completed until yesterday morning.

Q. Katz, you think you are crazy, don't you?

A. Do you think so?

Q. I say, you think so.

A. Do you think so?

Q. Didn't you make the statement at one of the times you were arrested you were hit over the head with a blackjack and you have a hole in your head?

A. No.

Q. Isn't it a fact that you have a hole in your head?

A. I have not a hole in my head no more than you have.

Q. Did you tell that to Mr. O'Neill?

A. I had a conversation, but it related to nothing about a hole in my head.

Q. Did you say you thought you were crazy?

A. No.

[fol. 206] Q. Didn't you say you could not resist the temptation to commit crimes, as soon as you were out of jail and on the street you were getting yourself in trouble and committing some crime or other?

A. No, sir.

Q. If I tod you Commissioner O'Neill made the statement that was what you said, would you say he would be lying?

A. You are liable to say anything; you are a lawyer.

Q. I said, suppose I told you Commissioner O'Neill said it, would you say Commissioner O'Neill was not telling the truth?

Mr. Singer: He does not have to make a statement about Commissioner O'Neill.

The Court: You can ask him if he told him, but he does not have to give his impression of Mr. O'Neill's truthfulness.

Q. Do you know Mr. Samuel J. Siegel?

A. Yes, sir.

Q. He is an attorney, is he not?

A. He is.

Q. Did you ask him to come to see you at Federal Detention Headquarters on West Street?

A. No, sir.

Q. Did he come to see you?

A. Yes, sir.

Q. Do you recall giving him a message and asking him to deliver the message?

Mr. Singer: If there is anything between this man and counsel, that is privileged.

Mr. Wegman: Not if he asked him to deliver the message. [fol. 207] I am asking if he asked Mr. Siegel to deliver a message.

The Court: I do not know whether that is privileged or not. Any conference you had with anybody who was your lawyer, or stood in the position of lawyer to you, you are not obliged to divulge that. You may decline to answer as to any conversation you had with anybody who was your lawyer, acting for you as your lawyer, at the time when you had a conference with him.

Q. Do you remember asking Mr. Samuel J. Siegel to carry a message to Harry Berger's attorney, to say to Harry Berger's attorney you were sorry you brought him into it, you knew he was not guilty, and you did it because you were sore at him and thought he was fooling around with your wife?

A. Will Mr. Siegel take the stand and say that?

Mr. Siegel: May it appear I am not the Mr. Siegel referred to.

Cross-examination.

By Mr. Crooks:

Q. I understand the first time you met the defendant Jones was in this apartment, where was it, 57th Street?

A. Right.

Q. Will you tell me what day of the month that was?

A. Sometime in December, I do not remember the date.

Q. What is your best recollection as to the exact date?

A. I know it was before Christmas.

Q. Sometime before Christmas day?

A. Yes.

[fol. 208] Q. Have you any idea how long it might have been before that?

A. No, I have not.

Q. You were there at the time Jones called at the apartment?

A. Once I was there.

Q. I mean you were in the apartment at the time?

A. One time I was there when he called.

Q. Didn't you testify he was there twice?

A. That he was there twice?

Q. Yes.

A. I saw him more than twice up there, as far as that goes.

Q. How many times did you see Jones up there?

A. I saw him four times altogether.

Q. This first time, that was the occasion, of course, when you were introduced to him?

A. That is right.

Q. Who introduced you to him?

A. Berger did.

Q. Was that the time you had a conversation about the counterfeit money?

A. There was something said about it, yes.

Q. And then you said you got four counterfeit $100 bills, is that correct?

A. That is correct.

Q. And that you gave those four bills to Mr. Berger?

A. Right.

Q. In return for which Berger gave you $100?

A. Right.

Q. Where did that transaction happen?

A. In a small bed room that connects the bath room.

Q. Was that between you and Berger? Who was there at the time?

A. Berger and Jones.

Q. Jones was there, and who else?

[fol. 209] A. Another friend of his, myself.

Q. Another friend of who?

A. Berger's.

Q. At the time you turned over the four bills?

A. No, there was just Berger, myself and Jones when the bills were passed.

Q. Where was that?

A. In a small bed room right off the main bed room.

Q. What happened after you gave the four bills to Berger?

A. Five or ten minutes later I got the $100.

Q. You do not know what happened to those four $100 bills? Did you see what happened to them after you gave them to Berger?

A. Yes.

Q. What did you see?

A. I know Jones got them.

Q. I did not ask you that. I asked you if you saw anything happen to those bills?

A. I saw him pass them over to Jones.

Q. Did you see Berger pass them?

A. Yes.

Q. Where did that happen?

A. In the bath room that connects the other room.

Q. You were in the bath room then?

A. Yes, sir.

Q. Did you see how many bills Berger handed to Jones?

A. I do not know how many he handed to him.

Q. You do not know whether he gave him one, two, three, or the whole four bills?

A. I know two for positive he got.

Q. What makes you positive you know of two?

A. Because after Jones was arrested they brought a message back to me he got caught passing two.

[fol. 210] Q. So you figure after you were informed two of these bills you thought were accounted for, you assumed Jones must have gotten at least two of them?

A. Yes.

Q. When you handed these bills to Berger did you have any mark of identification on them?

A. No.

Q. Did you have any way of telling by which you could ever identify those bills afterwards?

A. I just knew the plate number on them.

Q. Did you have any mark of identification that you could tell what those bills were?

A. No, I did not.

Q. If I had come along and handed you a $100 bill, you could not tell whether that was one you had in your posession or not?

A. No, I could not.

Q. Now, when were you next shown, or when were you shown, these two bills that it was claimed or stated to you that Jones passed on somebody?

A. In the court room today. The first time I saw them was in this court room.

Q. And in answer to a question put by Mr. Singer, in which he asked you, "Are these the two bills that Jones received?" you answered, "Yes, they are the same two bills."

A. That is right.

Q. And you did not have any more idea whether those were the same bills or not?

A. Yes, I could tell by the plate number.

Q. Didn't you tell us you could not tell subsequent——

A. These are counterfeit bills.

[fol. 211] Mr. Singer: He said he did not put an identification mark on them.

Q. I asked the witness if I had come along with those two bills and handed you those two bills and asked you whether you knew you gave them to Jones you said you would not know?

Mr. Singer: You said if you had given him two other $100 bills would he have been able to tell what they were. You did not ask about these. You can have the testimony read back.

The Court: The jury heard the testimony.

Q. Do you want the jury to understand now, Mr. Katz, that you could take, and by looking at these two bills, say that they are the two bills that were delivered to Jones?

A. May I look at them?

(Bills handed to the witness.)

Mr. Singer: May I know which bills he is looking at?

Mr. Crooks: Government's Exhibits 1 and 2 marked for identification.

A. I won't say that these are exactly the bills, but they have the same plate number of the bills I gave him.

Q. But you did answer, in answer to Mr. Singer, that you were sure they were the same two bills?

A. Two $100 bills, yes.

[fol. 212] Q. Do you ever play horse races?

A. Never.

Q. Did you ever take any bets on the horses?

A. No, sir.

Q. Never did in your life?

A. No, sir.

Mr. Crooks: That is all.

The Court: One minute. It has been brought out here the man was arraigned before me, and I am going to ask him some questions.

When were you arraigned before me, didn't Commissioner O'Neill say you were crazy?

The Witness: Yes.

The Court: And didn't I tell you that you must have counsel, that I would not take your plea under those conditions?

The Witness: Yes.

The Court: And didn't you impose as a condition of making your plea that I should sentence you immediately?

The Witness: Yes.

The Court: And didn't I tell you that I would not?

The Witness: That is right.

The Court: And did I assign you counsel?

The Witness: Yes.

The Court: And you have had counsel and have been advised by him, is that right?

The Witness: That is right, sir.

[fol. 213] Redirect examination.

By Mr. Singer:

Q. Did you send for Commissioner O'Neill, or Mr. O'Neill?

A. Yes, I spoke to him. I sent for him.

Q. How did you know he was interested in the case of Molnar and Seigal?

A. A girl spoke to me out there and told me she was working for Mr. O'Neill and asked me about a lawyer and told me to speak to him regarding the case.

Q. So Mr. O'Neill came to speak to you, not as attorney for Molnar or Seigal, but in an attempt to represent you?

A. Yes, sir.

Q. And after he talked to you about an attempt to represent you, he came into court and made certain statements?

A. Yes.

Q. Now, you had never retained Mr. O'Neill?

A. No.

Q. You had not asked tim to be your lawyer?

A. No.

Q. He asked you if you wanted him to represent you?

A. He said he would represent me.

Q. And you said you did not want him to represent you?

A. Right.

Q. Now, Mr. Rappaport, he came over to see you?

Mr. Singer: Will you stand up, Mr. Rappaport?

(Mr. Rappaport stands up.)

Q. Did you ever speak to that man?

A. No. I do not think I spoke to him.

Q. Did he ever come over with anybody to talk to you [fol. 214] about this case?

A. Absolutely not.

Q. Is Mr. Wasserberger in court, this man Wasserberger that some lawyer here asked you about; did he have any business with you?

A. He came and spoke to me back there.

Q. You were in the pen. You did not send for him?

A. No.

Q. And he came over and started to talk to you?

A. Yes.

Q. Because there was a disturbance there?

A. Yes.

Q. And Wasserberger, you say, asked you not to testify against Berger?

A. Yes.

Q. To keep the evidence from the jury?

A. Right.

Q. Now tell me frankly, is what you said about Berger true?

A. Absolutely.

Q. Are you lying to cover anybody?

A. I am not covering anybody.

Q. Have you any reason to hurt Berger? If you have, tell me so now.

A. I have no reason to hurt anybody.

Q. Have you any reason to hurt Rice?

A. No.

Q. Did you dislike him for anything he did to you?

A. No.

Q. That you would want revenge for?

A. No.

Q. Take Talle and Seigal, have you anything against them?

A. I have nothing against anybody except one party there, and that is my wife.

Mr. Singer: That is every man's privilege.

[fol. 215] Mr. Siegel: I think the remark is uncalled for.

The Court: I did not hear it.

Q. Your testimony here is not inspired by any desire to get revenge on any of these defendants, is that correct?

A. That is correct.

Mr. Wegman: I object, calling for a conclusion.

Mr. Singer: I will withdraw the question.

Q. Do you remember the time, Mr. Katz, before Christmas of 1933, that you went with Mr. Rice to a haberdashery shop in New York?

A. Yes.

Q. What store was that?

A. Nat Lewis.

Q. Now, did anything happen in that store?

A. Yes, a $100 bill was passed.

Q. Did Rice buy anything?

A. Yes.

Q. And what did he tender for the stuff that he bought?

Mr. Kamber: Isn't that in evidence already?

The Court: I do not know whether it is in evidence or not.

Mr. Singer: I do not think it is from this witness.

Mr. Kamber: I do not think it is proper redirect.

The Court: I will allow it.

Mr. Kamber: Exception.

[fol. 216] Did you have any talk with Rice about the bill that he gave in that Lewis shop for this merchandise?

A. Yes.

Q. What was the talk? What did he say to you and what did you say to him?

A. He called me up at the Hotel Wellington. My wife was present in the room when I got the call.

Q. What did he say?

A. He told me to bring one of the bills over to meet him downtown. I came over to meet him and he told me it was the night before Christmas, that Nat Lewis was busy, and that he passed one of the bills in there, and he told me to go in and buy some stuff also, and I can get away with it. I told him I did not like to go in Nat Lewis because people know me in there. When I was in there picking out a woman's gown I saw a detective I knew, and he was watching, and I did not pass the bill. I went to Rice, gave a signal, and he walked out with me. He had bought a pair of gloves that day, and then he told me the way his bill was passed, there was another woman trying to pass a gold note, and they recognized the gold note, and looked at

Rice's bill and said, "See, that is good, it has threads." The next day Nat Lewis called up Rice.

Mr. Kamber: I object.

Q. Who told you that?

A. Rice told me.

Recross-examination.

By Mr. Kamber:

Q. Let us get this right. You say Rice called you up at the Hotel Wellington and told you to bring down to him [fol. 217] one of these counterfeit $100 bills?

A. Not to bring down to him. The one I was supposed to use.

Q. You were to bring down the bill you were supposed to use?

A. Right.

Q. So you went down and met Rice with the bill, the $100 bill, you were supposed to use?

A. Yes.

Q. Then you want to tell the jury Rice told you to go in to Nat Lewis with him and purchase something at Nat Lewis?

A. Yes.

Q. Did Rice tell you he had been doing business for 15 or more years with Lewis, that he was pretty well known in Lewis' store?

A. That is the reason he went with me, in case anything happened he would——

Q. Did he tell you he was doing business with Lewis a good many years and was known to Lewis?

A. No.

Q. And every girl there knew him as being a man who did a lot of business with Lewis?

A. I do not know that.

Q. You said he told you he is coming in with you so in case there is trouble he would prove an alibi for you?

A. Yes, right.

Q. So you went in with him?

A. Yes.

Q. And when you went in with him you saw a detective you knew?

A. Right.

Q. And then you stopped right then and there?
A. Yes.
Q. And you ran out of the store or walked out?
A. I did not run, I walked over to Rice. There was a lot of people in there.
[fol. 218] Q. And you told Rice you did not want to pass this $100 bill, or purchase anything, because you recognized a detective of the Police Department of the City of New York?
A. I did not tell him anything. I walked over to him and walked out with him.
Q. Did you tell him anything about the detective?
A. Outside I did.
Q. You told him there was a detective there?
A. Yes, Marty Owens was in the store.
Q. Marty Owens; you know him pretty well?
A. Yes.
Q. He knows you pretty well?
A. He arrested me once.
Q. As soon as you saw Marty Owens—did you have the $100 bill in your possession?
A. Right.
Q. And as soon as you saw him you walked out with Rice?
A. That is right.
Q. And you did not buy anything at all there that night?
A. Nothing.
Q. And did you go back to the store?
A. No, sir.
Q. You did not go back to the store at all, is that right?
A. That is right.

Mr. Kamber: That is all.

Recross-examination.

By Mr. O'Neill:

Q. Just for the sake of correctness on this meeting with me. I have not brought out the conversation that follows, but let us get this thing right about my coming to your cell. Didn't you send for me?
A. Yes.

[fol. 219] Q. You testified here you sent for me?

A. Yes.

Q. I was walking down the corridor that day when you asked the Marshal——

A. To call you.

Q. To send for me, and the Marshal came down and brought me to you?

A. That is right.

Q. I did not ask you to appear as your counsel, did I?

A. You assumed that. I assumed the way you were speaking you would.

Q. I told you I had represented these two girls?

A. Yes.

Q. And isn't it a fact you asked me to insist that you take a plea right away, that you wanted Judge Inch to take your plea? Isn't that—I am not trying to put anything in your mouth.

A. I do not remember whether I asked about a plea.

Q. You did want to take a plea that morning?

A. I spoke to you after court.

Q. Didn't I tell you at that time I represented interests hostile to you and therefore I could not appear for you?

A. No.

Q. Do you remember the morning you were arraigned before His Honor here in open court and I made that statement to his Honor, and you said not a word—don't you remember I said to his Honor you wanted me to appear for you, and that I represented interests that were hostile to you, and therefore could not?

A. No, Mr. Singer asked me whether you represented me, and I said no.

Mr. O'Neill: I will go on his Honor's recollection.

The Court: I am not a witness.

[fol. 220] Mr. O'Neill: I think everybody who was present remembers it.

Mr. Singer: I don't remember it.

Mr. Kroopff: You have a poor memory.

The Court: That remark was improper.

Mr. Kroopff: I do not think it was any more improper than the District Attorney's remark.

The Court: I think it was improper.

Mr. Singer: I think Mr. O'Neill's remark was improper too.

Recross-examination.

By Mr. Wegman:

Q. You were very friendly with Berger until January 15th, weren't you?

A. Until January 15th?

Q. Yes.

A. No.

Q. When did you stop being friendly with him?

A. The night that he broke into the apartment up there.

Q. What night was that?

A. I am wrong there. I stopped being friendly with him when he went down to the parole office regarding a statement Mrs. Katz made.

Q. That was after the night he had found you in that apartment?

A. No, before that.

Q. You were in that apartment with another man?

A. Yes.

Q. Who was the other man?

A. I refuse to answer.

[fol. 221] Mr. Wegman: Will your Honor direct him to answer?

The Court: On what ground do you refuse to answer?

The Witness: It is incriminating.

The Court: Incriminating what? I think you will have to answer.

The Witness: I will answer the question if you will let me tell you why that man was up there.

The Court: Mr. Singer can ask you that. I think you have to answer.

Q. Your answer is you won't answer because it will incriminate you?

A. Incriminate someone else, perhaps.

Q. Will it incriminate you to answer that question?

A. It might degrade me, yes.

Mr. Wegman: May we have a ruling?

The Court: He says it would degrade him.

A. It would degrade me if I mentioned the man's name.

Q. On that night Berger came up to that apartment, knocked on the door, and finally forced his way and found you there with the other man?

A He did not force his way. The other man opened the door.

Q. After he had been pounding on it twenty minutes?

A. No, he was not pounding twenty minutes.

[fol. 222] Q. How long was he pounding on it?

A. I would say a few minutes.

Q. And it was after that that you decided you were going to get even with Berger, wasn't it?

A. No, sir.

Q. Had you decided that before that date?

A. I never decided to get even with anybody.

The Court: Would you mind putting your hand down, Mr. Witness?

Q. Isn't it a fact you went to various persons and tried to cause trouble for Berger?

A. No, just the opposite.

Q. Isn't it a fact you went to the office of the Daily News and tried to get him some unpleasant publicity?

A. No.

Q. Isn't it a fact you went to see Captain McDermott and tried to get Captain McDermott to file a charge against Berger?

A. No.

Q. Did you ever go to any police officer and try to get him to file a charge against Berger?

A. I never tried to file a charge.

Q. Didn't you go to the police officers and attempt to inform them of what you claim was a crime he had committed?

A. No, sir.

Mr. Singer: Of course, counsel is opening the door here in a wide range.

Mr. Wegman: I am opening the door deliberately.

The Court: They are all collateral.

Mr. Wegman: I know exactly what I am doing and when [fol. 223] I need instructions from Mr. Singer I will come to him humbly and ask.

Mr. Singer: You should.

Mr. Wegman: I know you are an expert.

The Court: If the jury will disregard all these pleasantries of counsel, we will get along faster

Q. You never had anything at all against Berger up until this moment?

A. Right.

Q. You have the friendliest feeling for him?

A. No, I have not.

Q. What is your feeling towards Berger?

A. I do not feel very good; he went to the parole office and started the whole disturbance there.

Q. Were you there?

A. I was called down later when a warrant was issued for me. He was there with my wife in the parole office making a statement down there.

Q. That was after the time he found you in the apartment?

A. No, that was before.

Q. Was this after the time you claim he dealt with you in counterfeit money?

A. I do not get that question.

Q. Did this occurrence in the parole office where you said Berger tried to get you in trouble with the parole officer take place after the time——

A. I did not say he went down to get me into trouble. It led to trouble. He went down there with regard to a complaint my wife made about him, a remark about Berger, about his parole, and he went down there and the girls told him, Miss Talle——

[fol. 224] Mr. Siegel: I object; it is hearsay, and move to strike it out.

The Court: I will strike it out. It is hearsay. You were not there, were you?

The Witness: I was in the apartment.

The Court: You were not there at the time Berger was there?

The Witness: Not at the parole office.

The Court: Then it is all hearsay.

Q. What were you doing in the apartment that night that Berger found you there with this other man?

Mr. Singer: I do not think he has to answer that.

The Court: He has not claimed his constitutional right.

Mr. Singer: The witness before told you he did not desire to answer anything except about counterfeit money on the ground it might incriminate him.

The Court: He has to claim his privilege.

A. I refuse to answer.

Q. On the ground it might incriminate or degrade you?

A. No, I just refuse.

The Court: You cannot just refuse. On what ground do you refuse?

The Witness: It might incriminate me further on.

The Court: All right; on that ground you are not required to answer.

[fol. 225] Q. All of these things, Katz, took place in January, did they not?

Mr. Singer: All of which things?

Mr. Wegman: That he testified to now on cross-examination in the so-called visit to the parole office and the incident at the apartment and the restaurant.

Q. That was all in January?

A. January, yes.

Q. And all of that was after the time you claim Berger handled this counterfeit money that you claim went to Jones?

A. Yes.

Mr. Wegman: That is all.

(Witness excused.)

MORRIS RAPPAPORT, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Q. You are an attorney and practice law in Brooklyn?

A. Yes.

Q. Did you ever speak to the witness Katz?

A. No, sir.

Q. Were you present when anybody else spoke to him in the pen?

A. No.

Q. Did you overhear any conversation?

A. No, sir.

(Witness excused.)

[fol. 226] ROBERT L. GODBY, resumed the stand and testified as follows, having been previously sworn:

Direct examination.

By Mr. Singer:

Q. Now, Mr. Godby, I have not asked you any question, have I?

A. No.

Q. You are an operative of the United States Secret Service?

A. Yes, sir.

Q. How many years are you connected with the United States Secret Service?

A. About 13.

Q. Of the defendants in this case whom did you first meet?

A. Mrs. Katz.

Q. And when did you first meet her?

A. January 27th.

Q. Prior to that time you had not seen any of the defendants at all?

A. Of the defendants on trial?

Q. Including the defendant Katz.

A. I had.

Q. Who had you met before that?

A. I met Katz on the 18th of January.

Q. Where did you meet Katz?

A. I met him in the office of the New York Daily News.

Q. Between the time when you first met Katz and the time when you first met Mrs. Katz, had you seen any of the other defendants?

A. I had.

Q. Now, let us go back to the time, I think you said January 17th?

A. January 18th was the first time.

Q. How soon after January 18th did you meet the next defendant?

A. I met the next defendant about January 23rd. Mr. [fol. 227] Singer, did you ask "meet" them or "observe" them?

Q. Observe them.

A. The next time, January 19th, I observed the defendant Lee and Rice.

Q. Where did you see them?

A. In Roth's Restaurant, Broadway, between 48th and 47th Street.

Q. Before you saw Lee and Rice on the 19th, as you testified, had you heard any conversation between Katz and anybody else?

A. I did.

Q. Where did you hear that conversation?

A. Over the telephone in the office of the New York Daily News. I was on the extra extension when Katz 'phoned.

Q. You were listening in on a telephone conversation between Katz and somebody else?

A. And the defendant Rice.

Mr. Kamber: I move to strike that out.

The Court: I will strike it out. I cannot see how he could tell.

Mr. Singer: I will show your Honor in a moment.

The Court: I will strike it out for the present.

Q. After that time did you ever hear him speak?

A. I did.

Q. Can you tell me now whether you can identify the voice you heard over the telephone at the time Katz spoke from the office of the News on the 19th?

[fol. 228] Mr. Kamber: I object to that and I ask an opportunity to interrogate the witness as to his qualifications as to whether or not he could tell after he heard this man's voice perhaps one, two or three weeks afterwards.

The Court: If he says he knew the voice it is a question of fact and goes to the weight of the evidence. The question is whether he knew the voice.

Mr. Kamber: At the time he first heard the voice there is no evidence he knew it was this man.

The Court: The question here is whether the voice he heard on the second occasion was the same voice that he heard over the 'phone on the first occasion. It is a question for you on cross-examination. It is a question of weight, not admissibility.

Mr. Kamber: That is correct. At this time I do not think Mr. Singer laid a foundation to qualify the witness that the voice he heard at that time was the defendant's.

The Court: I do not know that he is an expert in voices. It is a question of fact whether he knew the voices.

Mr. Kamber: All right; I will take an exception to the ruling.

A. Yes, sir, I had heard the voice the first time I judge around four o'clock.

[fol. 229] The Court: The first time you heard the voice did you hear it once or was there a conversation?

The Witness: There was a conversation on the telephone.

The Court: And you heard the whole conversation?

The Witness: I did.

The Court: And heard the voice carrying on the whole conversation.

The Witness: I did.

Q. And you heard that voice later?

A. I did, at 7:30 that night, about three hours later.

Q. And you are able to testify now that the voice you heard later and that you identified as Rice's was the same voice that you heard over the telephone at four o'clock?

A. I did; I can.

Q. Tell me what was said over the telephone between Katz and Rice.

Mr. Kamber: I object to that conversation on the ground it is incompetent, irrelevant and immaterial; on the further ground that there is no testimony here sufficient to qualify this witness to say it was the voice of the defendant Rice.

The Court: I understood him to say it. I do not know. If there is any doubt about it, make it perfectly plain.

By the Court: Whose voice was it you heard the second time?

The Witness: The defendant Rice.

[fol. 230] The Court: Whose voice was it you heard the first time?

The Witness: Defendant Rice.

Mr. Kamber: If your Honor please.

The Court: He said it. Your objection is overruled, and you have an exception.

Q. Tell me what was said.

A. Over the telephone Katz called the number, someone else answered, and he asked for Jack Rice. He got on and he said, "Jack, how are you?" He said, "This is little Jackie." He said, "I want to see you." He said, "I would

rather you — not talk over the telephone. Your wife has been around here pestering me and things are kind of hot." So they made a date. Katz said, "I want to meet you." Rice said, "Where?" Katz answered, "Any place you say." So they finally decided they would meet at Roth's.

Mr. Kamber: I object.

The Court: Tell us what was said.

A. Rice finally said, "Jackie, meet me at Roth's Restaurant about 7:30 tonight."

Q. That night at 7:30 where were you?

A. In Roth's Restaurant.

Q. Who was with you?

A. Agent Fitzpatrick.

Q. Fitzgerald?

A. Agent Fitzgerald, Detectives Schultheis and O'Brien.

Q. Now, where were you seated?

A. I was seated at the first little table as you come in the door, the single table.

[fol. 231] Q. Who did you see come into the restaurant?

A. The defendant Rice and Lee.

Q. Had you seen the witness Katz?

A. I did, sitting at the first table on the left as you come in, alone, next to the cashier,

Q. Did you see what Rice and Lee did?

A. Lee sat there and Rice did all the talking.

Q. What table did they sit at?

A. Right at the same table with Katz.

Q. How far away were you at that time?

A. I would say about eight feet, approximately.

Q. Did you overhear the conversation?

A. I did.

Q. Tell me what you heard at that table.

A. I heard the defendant Rice say to Katz, "Don't call me up any more. Things are kind of hot. Stay away from the office. If you want to get in touch with me, have someone else get in touch with me." The defendant Lee just listened there and did not say anything that I can recall. That was about the extent of the conversation after greetings of "How are you," and he told Katz to lay low for about a week, and Katz said he thought he would go to Philadelphia.

Q. Rice said to Katz, "Lay low?"

A. About a week. "Things are very hot."

Q. When was the next time you saw Rice and Lee?

A. January 29th, at the same restaurant.

Q. Again, before you saw him at the restaurant, was there a telephone conversation?

A. There was.

Q. Where was this conversation?

A. In the office of the New York Daily News.

[fol. 232] Q. And again did you listen on the wire?

A. I did.

Q. And did you hear the same voice that you heard over the wire some time before?

A. I did.

Q. And the same voice you heard that night in Roth's Restaurant?

A. That is correct.

Q. Could you identify the voice you heard answer Katz?

A. I could. It was the voice of Jack Rice.

Q. What was said at that time?

A. Katz called up and asked him to bring over a couple of large bottle of Ginger Ale, as he had some business. Rice said, "I will meet you at the same place about the same time." That was about the extent of the conversation.

Q. Later that same day did you go anywheres?

A. I did. I went to Roth's Restaurant on Broadway between 48th and 47th Street, and when I got there I observed the defendants Rice, Lee and Katz, sitting at the counter, at the lunch bar.

Q. What did you do?

A. I covered outside, Agent Fitzgerald went inside, I covered on the outside until they came out.

Q. Did they come out?

A. They did, and parted in front of the restaurant. The defendants Rice and Lee walked to Playland at 52nd Street and Seventh Avenue, where they contacted with some other man, and we remained there until ten o'clock.

Q. Then you left them?

A. Then we left them.

Q. Who was the next defendant you met?

[fol. 233] A. The next defendant I met was Miss Talle and Miss Molnar.

Q. Did you have a talk with them?

A. I did on several occasions.

Q. Let us bring you down to February 1st. On February 1st did you have a talk with Miss Molnar and Miss Talle?

A. I did.

Q. As a result of that conversation did they write out in their own hand, Miss Molnar and Miss Seigal, a statement, and sign it?

A. They did.

Q. Now may I have those statements, please?

(Handed to Mr. Singer.)

Q. First I show you this statement and ask you whether Miss Talle, whose name now is known as Seigel, wrote that in her own hand and signed it?

A. She did.

Q. In your presence?

A. Yes, sir.

Q. Where was it written?

A. In the hotel room in the Hotel Wellington.

Q. How long before their arrest?

A. This was written on the 1st and they were arrested on the 5th.

Q. They were not in custody at that time?

A. They were not.

Mr. Singer: That is offered in evidence as against the defendant Talle.

Mr. Kroopff: May I see it?

Mr. Singer: While you are reading it, I will go on with this paper.

[fol. 234] Q. I show you this paper and ask you whether that paper was written by the defendant Joyce Molnar, now known as Angela Joyce Molnar?

A. It was.

Q. Under the same circumstances as the other paper was written by Miss Seigal?

A. Yes.

Q. Before she was under arrest?

A. Yes, sir.

Q. And when there were no charges pending against her?

A. Yes, sir.

Q. And the statement was made of her own free will?

A. Yes.

Mr. Singer: This paper is offered as against the defendant Molnar. To clarify the record, each statement is offered against the person who made it solely.

Mr. Kroopff: I object to the offer of this paper on the ground it has absolutely no probative value against the defendant.

The Court: Then you had better have it in.

Mr. Kroopff: The point is it has no value whatsoever as a statement concerning this alleged conspiracy as against the defendant, and for that reason I object to the admissibility of it.

The Court: Objection overruled.

Mr. Kroopff: Exception.

Mr. Wegman: I object.

The Court: It is not offered against your client.

Mr. Wegman: May I put my objection on the record?

The Court: You can put any objection you want. It is [fol. 235] not offered against your client. Make any objection you want.

Mr. Wegman: I object to it on the ground it is obviously offered in an effort to influence the jury by a reading of it against the man I represent. It is highly prejudicial to him and has no bearing whatever against him. It is ostensibly offered——

The Court: I do not agree with that and I overrule your objection. It has considerable weight with me.

Mr. Wegman: I ask your Honor to consider the further fact it is not an admission against interest and is not a confession in any sense.

The Court: I have ruled.

Mr. Wegman: Exception. May I ask your Honor to instruct the jury at this time that this paper which your Honor has admitted in evidence as Government's Exhibit 8 is not to be considered by the jury in any way whatsoever as affecting any person named therein excepting the defendant who made the *defendant*?

The Court: Absolutely, and I will make it perfectly plain to them when the time comes. That is true. This does not bind anybody but the person who made it, and it is not evidence against anybody named in the paper except the party who made it.

Mr. Kroopff: Exception. I object to your instruction [fol. 236] this paper is material as a matter of law against them. I did not read it.

The Court: I instructed them it was not evidence against any person named therein except the person who made it, and then they can consider it and I will instruct them.

Mr. Kroopff: I had not understood.

The Court: If you had listened you would have heard. The trouble is too many try to speak at once.

Mr. Wegman: May I have the same objection as to this other paper?

The Court: The same objection as to the other one, and the jury are instructed that neither one of these papers is to be considered as evidence against anybody but the person who made it. Anybody else named therein is not bound by any of the statements therein.

Mr. O'Neill: On behalf of the defendant Molnar, I object to the acceptance of this statement in evidence on the ground there is no statement whatever containing or involving a confession or incriminating my client in any respect whatsoever.

The Court: Overruled. You may have an exception.

Mr. O'Neill: On the further ground that it is immaterial, incompetent and irrelevant for all purposes.

[fol. 237] The Court: Your objection is overruled and you may have an exception.

Mr. O'Neill: I will save an exception.

The Court: I consider the paper of quite some moment to me.

(Marked Government's Exhibits 8 and 9 in evidence.)

Mr. O'Neill: I object to that remark. I will except to that remark in the presence of the jury.

The Court: I think you will be glad I made it. You have done all you could and I have ruled.

Gentlemen, do not allow anybody to talk to you about the case, do not discuss it between yourselves, do not form any opinion until it is finally submitted to you, and come back at two o'clock.

Recess until 2 P. M.

Met pursuant to adjournment at 2 P. M.; present as before.

Mr. Irving Davis: Mr. Siegel, before leaving at approximately five minutes to one, after the recess for the morning

session had been declared, asked me to make an application for the adjournment of this case until tomorrow morning by reason of the fact that he was compelled and directed to appear in the Court of Appeals, State of New York, in Albany, to argue an appeal on behalf of the appellant in the [fol. 238] case of 515 Broadway Realty Company v. —— Realty Company, and for that reason would not be able to appear this afternoon and continue to act as attorney for Ray Smorgan Katz, one of the defendants herein.

The Court: I cannot grant it, and Mr. Siegel said you would be here to take care of it. I will give you an exception.

Mr. Singer: May I read Exhibit 8, your Honor?

The Court: I do not see much reason for it. They bind only these two defendants and nobody else, and I do not see much reason for it. They bind only them, and under the present condition of my mind on the subject, I see no reason for reading them.

Robert L. Goday resumed the stand.

Direct examination.

By Mr. Singer; continued.

Q. Did you have a talk with Miss Molnar before she signed this paper?

A. I did.

Q. Did you have a talk with Miss Talle or Miss Seigal before she signed this paper?

A. I did.

Q. Were you present when Rice was taken into custody?

A. I was.

Q. Where was he arrested?

A. In his office in the Longacre Building.

Q. What time, and what day was he arrested?

A. It was on February 6th.

[fol. 239] Q. Of this year?

A. Of this year.

Q. Who was present when Rice was arrested?

Mr. Kamber: I object, incompetent, irrelevant and immaterial, who was present.

The Court: Overruled.
Mr. Kamber: I take an exception.

A. The defendant Lee, Dapper Dan Collins, Edward Slickner, and another gentleman, I do not just recall his name, two other gentlemen.

Q. Did you talk to Lee and to Rice?

A. I did.

Q. Now, did you ask them—I direct your attention to one particular point to save time, did you ask them whether they knew Katz?

A. At the West 47th Street station house.

Mr. Kamber: I object to any conversation had with either Rice or Lee after their arrest.

The Court: Did you say anything to them first?

Mr. Singer: I say to your Honor the law is well settled. This is a police officer. He need not say anything.

The Court: What is this man?

Mr. Singer: A Secret Service agent, not the United States Attorney, who was the only one obliged to warn anybody of his rights, and that is the law.

The Court: This was the conversation at the time of the arrest?

The Witness: Yes, sir.

[fol. 240] The Court: Overruled.

Mr. Kamber: Exception.

Q. Did you say anything to him?

A. I did.

Q. What did you say?

A. I asked him if he knew the defendant Katz, and showed him a photograph. He said he did not know him. That was at the 47th Street police station.

Q. Did you ask Lee the same thing?

A. I asked Lee, and Lee said yes, he had met that man and knew him.

Q. What else did you say to either or both?

A. I asked both of them about the two trips they had made to Roth's Restaurant when they were in conversation with the defendant Katz. They both denied that they had been to Roth's Restaurant.

Q. Now, did you have a talk with Mrs. Katz, Ray Smorgan Katz?

A. I did.

Q. When did you first see her?

A. January 27th.

Q. Where did you meet her?

A. At her home.

Q. Where was that?

A. She lives on Walton Avenue, Bronx.

Q. Will you tell me everything she said to you and you said to her?

A. I went up to see her, called her up first, and told her I was from the Secret Service, and Agent Rodney asked me to get in touch with her. I went up there and asked her what she knew about the counterfeiting angle. She said she already had reported to Mr. Rodney, but would repeat [fol. 241] what she reported to him. She stated her husband had been passing a number of counterfeit bills.

Mr. Singer: This is offered only against Ray Smorgan Katz and nobody else.

The Court: It does not bind anybody else.

Mr. Singer: It is not offered against anybody else.

A. (Continuing:) That he was hanging out in an office on 42nd Street and Broadway, where he was obtaining these notes, but she could not tell me the name of anyone connected with the passing of the counterfeits. She stated on one occasion previous to Christmas she asked her husband for some money, and that she went to a ladies' store to purchase a pair of stockings, and tendered a $20 bill in payment of same. The clerk in the store detected it was counterfeit and returned the bill to her and she paid in good currency. She then went back to where she was living with her husband and told him about it, that it was counterfeit, and they started an argument, and shortly after that she left him.

Q. Were you present in the office of the United States Attorney when Mr. Rice was being examined by me?

A. I was.

Q. Before I examined him did I warn him of his constitutional rights?

A. You did.

Q. Do you remember what I stated to him before I examined him?

A. You mean about the warning?

[fol. 242] Q. Yes.

A. Yes, sir; you told him anything he might say would be used against him and he was entitled to have an attorney, and he said he wanted to make a statement.

Q. At that time did I ask Mr. Rice whether he knew Katz?

A. You did.

Q. What did he say?

A. He said yes——

Mr. Kamber: I object to that. I understand it is in writing.

Mr. Singer: I did not say it was in writing, and for your benefit, it was not in writing.

A. (Continuing:) He said yes, but he knew him under a different name. You asked him if he knew his wife. He said he had met his wife.

Q. Did I ask him why he had told you he did not know K[illegible]?

A. Yes, you did.

Q. What did he say about that?

A. He stated he knew this man under another name.

Q. Did I ask him whether he had met Katz when he was with Lee in the Roth Restaurant on Broadway, Manhattan?

A. You did.

Q. Did he say that he had met him?

A. He finally admitted he had met him.

Q. Did I ask him why he told you he did not meet Katz in Roth's?

A. Yes, you did.

Q. What did he say about that?

A. I just cannot recall that answer.

Q. Were you present when I examined Lee?

A. I was.

Q. Did I warn Lee of his constitutional right before I spoke to him?

A. You did.

[fol. 243] Q. Was the warning in somewhat similar language?

A. It was the same language.

Q. Was Lee asked why he had told you he did not see Katz in Roth's Restaurant after he had admitted to me he had seen him?

A. Yes, sir; he admitted he had told me he had not seen him and then he also admitted to you that he had seen him.

Q. Did he explain why he had made that statement to you?

A. I do not just recall that, Mr. Singer.

Q. Were you present when Berger was questioned?

A. I was.

Q. Was Berger warned of his constitutional right?

A. He was.

Q. Was Berger asked whether he knew Jones?

A. He was.

Q. What did he say?

A. He said yes, he knew Jones.

Q. Was Berger asked whether he had been with Jones at the Parision Dance Hall, Manhattan?

A. Yes, and he admitted that.

Q. Was he asked whether he had taken Jones to the apartment of the two girls on West 57th Street?

A. He was, and stated on that occasion he had introduced Katz and the two girls.

Mr. Crooks: I object.

Mr. Singer: Our offer is made solely against this man.

The Court: Correct.

Q. What did he say about Jones?

A. He stated that he had taken Jones to the apartment [fol. 244] at 350 West 57th Street, and that it was he who introduced Jones to Katz.

Q. He denied, however, all knowledge of counterfeit bills?

A. He did. He said his only relation with Jones was he was assisting Jones in the purchase of the concecssion at the Parisian Dance Hall.

Q. Lee denied knowing anything about counterfeit bills and so did Rice?

A. They both did.

Q. And when you searched Rice, Lee and Berger, they had no counterfeit bills on them?

A. None whatsoever.

Q. And incidentally, when the ladies were searched, you have no claim there was any counterfeit bills on them?

A. There was not on any of the ladies.

Q. And when I say "ladies" I include all three of them, because we were talking about two before.

A. Yes.

Q. Did Berger state how many times he had been down at the Parisian Dance Hall?

A. I believe he said about twice.

Q. And did Berger state how many times Jones had been to the apartment on West 57th Street?

A. To the best of my recollection, he said once.

Cross-examination.

By Mr. Kamber:

Q. You have been in the service 13 to 15 years?

A. About that, yes.

Q. And of course in all that time you have had a considerable and large experience with counterfeiting cases?

A. I have.

[fol. 245] Q. You have testified in quite a few of them, haven't you?

A. I have.

Q. And in your office you met quite a few of them?

A. That is right.

Q. Now, when was the first contact that you made with Katz?

A. January 18th last year—of this year.

Q. And under what circumstances did you make the contact with him?

A. I was introduced to him.

Q. By whom?

A. By Mr. Connelly of the New York Daily News.

Q. Mr. Connelly of the New York Daily News; what is he, a reporter?

A. He is an investigator for the News, formerly connected with the Narcotic Division of the Government.

Q. You know Connolly pretty well?

A. Yes. You know him too.

Q. He is now connected with the Daily News, and he was formerly with the Narcotic Division?

A. Assistant Agent in charge of Narcotics for New York.

Q. Mr. Connelly told you that Katz was passing counterfeit notes?

A. Mr. Connelly introduced me to Katz and told me that Katz had some valuable information for the Government.

Q. Did you know at that time that Katz was an ex-convict?

A. I did, because I went into his record.

Q. That is, you knew at the time Connelly was introducing him he was an ex-convict?

A. Yes.

Q. How long before you met Katz were you told about him by Connelly?

A. About two days previous.

[fol. 246] Q. Did Connelly say that he was an ex-convict?

A. No, he did not.

Q. What led you to investigate his record if Connelly did not tell you he was an ex-convict?

Q. When a man is giving information I find out all about the man.

Q. Two days before you met Katz—you say two days before you met Katz, Connelly had a conversation with *with* you?

A. Yes.

Q. And as a result of that you went and investigated a man by the name of Katz?

A. No.

Mr. Singer: He never said that.

Q. You investigated——

Mr. Kamber: Do you want to take the stand, Mr. Singer?

The Court: He did not say that.

Mr. Kamber: Let him answer.

Q. Tell what happened after your conversation with Connelly the first time.

A. I came to New York and interviewed Mr. Katz.

Q. Where did Mr. Connelly give you this information?

A. I happened to be in Elmira when he 'phoned me.

Q. You and Connelly are pretty good friends?

A. Yes.

Q. And you are in charge of Elmira?

A. I am. All outside of the New York City district.

Q. And Connelly gave you what was known as a tip, more or less?

A. No; I will explain that to you.

[fol. 247] Q. Is that so, or not?

A. Tip?

Q. Yes.

A. Yes.

Q. Did he?

A. Yes, he gave me a tip.

Q. And in accordance with that tip, so-called, you came down to New York and interviewed Connelly?

A. Interviewed Katz.

Q. Now, did Connelly tell you where your could meet Katz?

A. He did.

Q. Where did he say you could meet him?

A. In the New York Daily News Building.

Q. And did you come down two days afterward?

A. I did. I arrived here the 18th.

Q. When you arrived here, Connelly and Katz were there to meet you?

A. They were.

Q. And you talked to Katz. That was on the 18th of January?

A. That is right.

Q. And then Katz told you about the fact that he had, from time to time, had in his possession counterfeit $100 bills?

A. He did.

Q. And that he had from time to time in his possession $20 counterfeit bills?

A. He did.

Q. And that he had passed this money?

A. Yes, and told me where he got them.

Q. I have not got to that yet. We are going to get to that. And at that time he told you he got them from this man Rice?

A. That is right.

Q. Did he mention anybody else?

A. No, he said he was doing business with Rice.

Q. Did he mention about selling any to Jones?

A. He did. He told me——

Q. That is all I want to know. Did he mention about selling any or having anything to do with any more of these defendants?

A. Yes, he told me what he had to do with all the de-

[fol. 248] fendants.

Q. In other words, he told you the same thing he said on the stand this morning?

A. Practically the same, yes.

Q. And he also told you that he had some argument with his wife?

Mr. Davis: I object.

Mr. Kamber: It is not against the wife.

Mr. Davis: Any statement he made would not be competent.

The Court: I am not going to let him go into it. It does not bind her, but do not go into what it was.

Mr. Kamber: I am not going to do that. I am going to take care of the young lady, although I am not her attorney.

A. He did.

Q. So you had the whole picture before you as he painted it before you?

Mr. Singer: He did not paint anything. Stop the picture talk.

The Court: Go ahead.

Mr. Kamber: I withdraw the word "paint."

The Court: You had better ask the question without the word "paint."

Q. So he told you this entire story and you took it in for all it was worth?

Mr. Singer: Let us not have any of that either.

[fol. 249] The Court: I will let that go.

Mr. Kamber: That is not painting, Mr. Singer.

Mr. Singer: No, not with a brush.

A. I took it down to check it up.

Q. But you took it all in as he told you?

A. No, I never take anything I am told until I check it up.

Q. And the first thing you checked up was whether he was a convict or not a convict?

A. No; he admitted that to me.

Q. In other words, he started to tell you, "Mr. Godby, I am a convict, and I have been in Sing Sing, and this is the story I have to tell you about counterfeit coin, and that I got a lot of counterfeit coin from a man named Rice, and that I passed it, and that I had business with this one and that one and the third one, all these defendants in this case;" is that right?

Mr. Singer: If any man can answer that——

The Court: There are too many questions in one.

Mr. Kamber: I will withdraw it all. All I want is to save time.

Mr. Singer: Do not save time. Save yourself.

The Court: The jury will disregard the remarks of counsel.

Q. First of all, Mr. Godby, he told you he was a convict?

A. May I answer that?

[fol. 250] Q. Did he tell you that?

A. No. I asked him a question and then he answered it.

Q. The first thing you asked him was: "What is your name?"

A. Yes.

Q. And he said "Jack Katz"?

A. Yes, sir.

Q. Did he say his name was also Pearce?

A. Not at that time.

Q. Then you said to him, "Have you ever been convicted of a crime?"

A. No. When he told me about Rice and Lee and the other defendants I asked where he met them and he said he met some of them in prison. Then I knew he was an ex-convict.

Q. How many of the "some of them" did he pretend to meet?

A. Mr. Lee.

Q. Then that is only one?

Mr. Singer: One is some.

A. (Continuing:) And Mr. Berger he knew from serving time in Sing Sing.

Q. He knew Berger?

A. Yes, sir.

Q. He served time with Berger?

A. That is my understanding.

Q. That is what he said?

A. That is what I understand.

Q. Then, of course, you did not take—— (withdrawn).

Q. After you heard that you started to check up?

A. I asked him, "What is your record?" and he told me his record.

Q. Did he give you a record of all the convictions he had?

A. No; he told me about a number of convictions he had.

[fol. 251] Then I went to Police Headquarters and got his record, also his photograph.

Q. Did you ascertain he had been a convict for over twelve years?

A. Well, he has been arrested a number of times.

Q. But you did ascertain his first conviction was twelve or thirteen years ago?

A. To the best of my recollection, it was.

Q. Talking to him, you told him what to do, did you, about getting at this crime and the people that were involved in it?

A. Not on that occasion. I told him I would meet him the next day.

Q. On the 19th you made no arrangement about putting him under your supervision or directing him what to do, but told him you would meet him the next day?

A. That was on the 19th.

Q. Then the conversation you just told this jury took place on the 18th?

A. On the 18th.

Q. And that was in Mr. Connelly's office?

A. That is right.

Q. In the office of the New York News?

A. That is right.

Q. Did Mr. Connelly participate in any of these conferences?

A. Part of it.

Q. Is Mr. Connelly in court?

A. I have not seen him.

Q. Did you see him during the trial of this case?

A. I have not.

Q. You made the appointment with Katz for the next day?

A. That is right.

[fol. 252] Q. Did you tell Katz what to do?

A. No, I told Katz——

Q. Yes or no?

A. No, until I met him that day.

Q. You did not tell him what to do on the 19th, yes or no.

Mr. Singer: Just a moment. Be fair too. If you are talking about the 18th, say so, and if you are talking about the 19th, say so. You say on the 18th you did not tell him what to do the next day.

Mr. Kamber: All right, don't get worried.
Mr. Singer: I am not worried.
The Court: Tell the witness what day.

Q. On the 18th you made another appointment with him for the 19th?

A. I told him I would check his record up and meet him on the 19th.

Q. And you met him on the 19th?

A. I did.

Q. And where did you meet him on the 19th?

A. I met him in the New York Daily News Building.

Q. Again?

A. Again.

Q. And at Mr. Connelly's office?

A. No, I wouldn't say Mr. Connelly's office.

Q. Where?

A. Right out in the sitting room.

Q. At what time?

A. I should think about four o'clock in the afternoon.

Q. And then did you have a talk with him?

A. I did.

Q. And did you tell him you checked up and found out his record?

A. I did. I told him——

[fol. 253] Q. Just a minute. Did you check up and find out his record?

A. I did.

Q. And did you check up and find a man by the name of Rice had an office at 42nd Street and Broadway?

A. I did.

Q. Did you check up the two girls living somewhere on 57th Street?

A. Not at that time.

Q. Did you check up that Berger was living some place else?

A. Not at that time.

Q. Did you check up that a man named Jones was living out there in Long Island?

A. I did.

Q. You got that from your own records?

A. From our own records.

Q. Did you check up as to anything else?

A. I did.

Q. So far as Rice is concerned?
A. I did.
Q. Well, you met him at four o'clock, right?
A. Yes.
Q. Of the 19th?
A. Of the 19th.
Q. And then you told him to call up Rice?
A. I did.
Q. Now, he knew he was calling up Rice and that you would be on the telephone, is that right?
A. At that time he did not know I was going to listen in. I went to another office while he was telephoning.
Q. When he was telephoning do you mean to tell me you told him you would not listen in?
A. I did.
Q. Did you tell this ex-convict——

Mr. Singer: Let us not have that.
The Court: We are talking about Katz.
Mr. Singer: He is not the only ex-convict.

[fol. 254] Q. Is it a fact you went and listened in on the other telephone?
A. It is.
Q. And did you suggest to this man Katz to call up and make an appointment with Rice?
A. I did.
Q. And in pursuance of your suggestion that appointment was made?
A. That is right.
Q. And then you met, as you say, at Roth's Restaurant?
A. That is right.
Q. Now, you have been in Roth's Restaurant, haven't you?
A. Which one? They have several.
Q. How many were you in?
A. There are several.
Q. The one you were in?
A. It was the first time I had been in there.
Q. You have been in Roth's Restaurant since?
A. Not since.
Q. I do not want to get you in any other Roth's Restaurant except the one you were in; the one you were in is on the west side of Broadway?
A. It is.

Q. And it is a restaurant between 48th and 49th Street?
A. I believe 48th and 49th Street or 48th and 47th Street.
Q. Almost in the middle of the block?
A. Approximately in the middle of the block.
Q. And it is a very large restaurant?
A. Pretty large.
Q. And would you say that the restaurant is at least 100 feet in length?
A. I would.
Q. Would you say it is 150 feet in length?
A. I would not want to say that.
Q. It is larger than this room, isn't it?
[fol. 255] A. I could not say; I never measured it.
Q. Now, when you go into this Roth's Restaurant, the cashier is on the right hand side?
A. No, the cashier is on the left hand side.
Q. All right. And the cashier also has a large desk there which contains cigars, and so forth?
A. It is a counter.
Q. Is that right?
A. That is right.
Q. Now, if you say that the cashier's place is on the left side——
A. Yes.
Q. Then the counter or bar is on the right side?
A. Right side.
Q. And the counter or bar is a large bar where a lot of people eat?
A. Stools there.
Q. The right window contained a sort of cafeteria place where they served——
A. Meats and things.
Q. Meats and things like that?
A. Yes.
Q. And you were sitting where?
A. I was sitting as you went in at the first table to the right.
Q. At the cashier's side?
A. No, the cashier is on the left as you go in.
Q. To the right. So that the first table to the left would be situated pretty close to the bar, wouldn't it?
A. No, it would not. It would be close to the cashier's cage.

Q. If the cashier's cage—you know the cashier has not a cage there?

A. Well, the cigar counter and register there.

Q. If you were sitting close to the cashier's cage, as you call it, or cigar counter, that would not leave any place between the counter, that is, the cashier's counter, and the [fol. 256] other counter, for people to walk; there is an aisle there?

A. There is quite a distance there as you come in on the left.

Q. Will you answer?

Mr. Kamber: I ask that he answer.

The Court: He is trying to tell you.

Q. Isn't it a fact as you go in there is quite a distance before the first table, before you strike the first table in Roth's Restaurant?

A. No, there is not quite a distance.

Q. How far?

A. I would say the first table from the cashier's booth there is about seven feet, that is, the table on the left as you go in.

Q. That is right; and at that table there is only room for two?

A. No, there is not. There is room for five or six.

Q. Who else were you sitting with?

A. I was not sitting at that table. I was at the table on the right. The defendants were sitting at the table on the left.

Q. The defendants were sitting on the table at the left?

A. Yes.

The Court: The defendants were sitting at the table, not on the table.

Q. Now, when you came in, of course you had Katz standing there waiting for Rice?

A. No, Katz was sitting down at the table.

Q. He was there all alone?

A. All alone at the table.

Q. And Rice came in and Lee came in?

A. That is right.

[fol. 257] Q. And they sat down?

A. That is right.

Q. How far away were you from that table?
A. I would say 8 or 10 feet.
Q. If I stand at this point here, were you as far as that?
A. I was closer.
Q. Were you as far as this?
A. I was 8 or 10 feet.
Q. Here?
A. No. You mean from where I am sitting?
Q. Yes.
A. I was closer than that.
Q. Were you as far as that? (Indicating)
A. That is approximately it.
Q. You say that is 8 to 10 feet?
A. Approximately.
Q. That was half past seven?
A. Half past seven.
Q. You know that is a pretty busy place at half past seven?
A. It is.
Q. A lot of girls walking up and down?
A. They did not come past our tables. Our tables were the first tables.
Q. I thought you said you were near the cashier's booth?
A. On the right.
Q. They had to go to the cashier to put in their bills, didn't they?
A. They could go up the other side of the partition.
Q. There are no partitions there, you know that?
A. Yes, there is.
Q. You know it is a large room?
A. There is a large partition there, and you know it too.
Q. You know a lot of girls go up and down there, they must have fifty or sixty girls?
A. I did not count them.
[fol. 258] Q. You know half past seven is a pretty busy time?
A. Yes, busy.
Q. Now, you say you heard a conversation?
A. I did.
Q. And you were about eight feet away?
A. Approximately 8 feet.

Q. With a lot of people going up and down, waitresses, and all people sitting at the bar where they were eating, did you see that?

A. No; the people sitting at the bar were on the other side of the restaurant. We were not near them at all.

Q. Of course, you had prepared Katz as to what he was to say?

A. No, I had not prepared Katz as to what he was to say. My object was to get a look at Rice and Lee.

Q. You got a look at Rice and Lee?

A. I did

Q. Then you walked out?

A. No, after they walked out I walked out.

Q. How long were you there, fifteen minutes?

A. Ten or fifteen minutes.

Q. Then they walked out and you walked out?

A. No, they walked out and Katz remained there.

Q. So that the only thing that you had in mind at that time was to get a view or a picture——

A. Get a look at them so I would know them the next time.

Q. Then you had a talk with Katz after they left?

A. I did.

Q. And as a result of that you made another appointment with Katz, didn't you?

A. I met him quite often.

Q. Parton me?

A. I met him quite often.

[fol. 259] Q. You met Katz quite often?

A. Quite often; practically every other day or so.

Q. So, from the 18th of January, until—what date was he arrested?

A. February 5th.

Q. In those three weeks you met Katz on and off every second day?

A. No, I was about a week I did not meet him, I went to Chicago in the meantime.

Q. You met him about a week?

A. I would say better than that, ten days.

Q. Then you turned him over to Agent Fitzgerald?

A. No.

Q. Did he meet any of the other agents in the meantime?

A. While I was in Chicago he was connected with Mr. Fitzgerald.

Q. You introduced him to Mr. Fitzgerald?

A. I did.

Q. Did you bring him to your office in Whitehall Street?

A. I did, around, I guess, the 28th.

Q. Now, of course, when Brother Connelly of the New York News, your very good friend, introduced you to him, Katz told you he was passing counterfeit bills?

A. Yes, he did.

Q. And Katz gave you a number of counterfeits?

A. He gave me a number.

Q. He gave you a number, told you how many?

A. Yes.

Q. Say more than five or six?

A. He told me about passing on Piccione and Zimmerman.

Q. He passed these?

A. He and the other defendants. He told me all about the other passes he made.

[fol. 260] Q. Of course, you told him that was a very serious offense, didn't you?

A. Naturally it is serious.

Q. You told him that, didn't you?

A. I do not recall that. I guess he knew it was.

Q. How did he know it?

A. I do not know.

Q. In other words, he told you of all the crimes he is charged with in this indictment, eight or nine?

A. Yes, and he also told me about the plates for it, that is what I was after, to get the plates.

Q. That is very true, that is proper. He told you about the plates. He told you the plates were in 42nd Street, didn't he?

A. In Rice's office.

Q. Did you search Rice's office?

A. We did, but——

Q. You did not find any plates?

A. No, we did not find them there at that time.

Q. Did you find the plates?

A. Not as yet.

Q. So what he told you about the plates that was not true, was it, so far as you know?

A. As far I know, I do not know whether they were there or not.

Q. You did not tell Katz he was liable to get 140 years imprisonment?

A. No.

Q. You did not tell him that for an ex-convict he had a pretty bad way of getting into an awful lot of trouble?

A. No; that subject did not come up.

Q. You did not say anything about it?

A. Not at that time.

[fol. 261] Q. Did you say at any other time?

A. When I looked him up.

Q. I am not going to use your words, I do not know what you said, but did you say, "Come across and get everybody in this, or tell me all about it, and I will see to it, or otherwise you will go up the river for your life"?

A. I never said that, and I am not allowed to say that. That is up to the Court, what they are going to get.

Q. You are not going to sentence him, but do you mean to tell the jury after he told you all this you did not say what he was liable to get?

A. No, I did not.

Q. Not a word about it?

A. No.

Q. You mean to tell this jury, knowing he was an ex-convict from your investigation, that you did not tell him he was going to get a long stretch if he did not bring in everybody that was in it?

A. I did not.

Q. You took his word for everything he said as being absolutely correct?

A. I do not take anybody's word until I check up.

Q. After you checked up you took his word as being absolutely correct?

A. I found it to be correct.

Q. You took his word as being correct?

Mr. Singer: He said he found it to be correct.

Mr. Kamber: All right, that is for the jury to say.

Q. You found it to be correct?

A. I did.

[fol. 262] Q. Just as correct as you want to tell the jury that you did not tell him what was in store for him?

Mr. Singer: I object.

The Court: You do not have to compare.

Mr. Kamber: I withdraw it.

The Court: Go on with the case. These remarks are interesting but not helpful.

Q. Well, in any event, relying just on what this Katz told you, you went and locked up everybody sitting at this table, is that right?

A. After I check up the information he gave me I took the matter up with the United States Attorney, and then locked them up.

Q. And then you got another statement from him from Mr. Singer?

A. Yes, sir, the same statement he gave me the first time.

Q. That was not put in writing, was it?

A. No.

Q. Then you brought him down here to the District Attorney's office and took him before the Grand Jury?

A. Yes, sir.

Q. That was part of the bargain?

A. I made no bargain with anybody.

Q. That was part of what he was going to do?

A. Naturally, he told me he wanted to tell the truth.

Q. That is, to save himself?

A. No, I could not say that. Naturally the man expected some consideration.

[fol. 263] Q. You say the man expected some consideration?

A. Naturally he would.

Q. Did you say he was going to get some consideration, yes or no?

A. No, I could not promise him any, you know that.

Q. Did you say he was going to get some consideration, yes or no?

A. I do not recall saying that.

Q. So, notwithstanding that you do not recall telling him about any consideration, and notwithstanding, from your statement, he did not expect any——

Mr. Singer: He never said he did not expect any. He said he did.

Mr. Kamber: All right, I withdraw it.

Mr. Singer: Do not say it and you won't have to withdraw it.

Q. Notwithstanding that——

Mr. Singer: Notwithstanding what?
Mr. Kamber: I withdraw that.

Q. He told you this story which resulted in the arrest and apprehension of these defendants?
A. He told me the story he related on the sand here, yes.

Cross-examination.

By Mr. Davis:

Q. When you spoke to Mrs. Katz on the 27th of January, 1933, did you ask her when she offered the bill when she was buying hosiery whether she knew it was a counterfeit bill?
A. Yes, sir.
[fol. 264] Q. And her answer was she did not know?
A. She did not know it. She returned it to her husband. It was the first time she knew about it.

Cross-examination.

By Mr. Hogan:

Q. Mr. Godby, you overheard two conversations, the first one between Mr. Katz and Mr. Rice, and that took place on January 19th, is that right?
A. That is right.
Q. You overheard no conversation between Lee and Katz or Lee and Mr. Rice, is that right?
A. I did not.
Q. At no time?
A. No.
Q. You searched Mr. Lee and found no money on him?
A. I did not.
Q. And he denied ever having possession of counterfeit or spurious money, is that right?
A. He did.
Q. The first time you met him in Roth's Restaurant he told you a lie?
A. What do you mean?
Q. He did not tell you the exact fact?
A. I did not speak to him in Roth's Restaurant.
Q. January 19th you went into Roth's Restaurant?
A. That is right.

Q. And that was by prearrangement with Katz?

A. Yes, sir.

Q. And that telephone conversation took place in the New York Daily News as a result of which Mr. Katz talked to Mr. Rice, and Katz and Mr. Rice and Mr. Lee [fol. 265] met in the restaurant?

A. That is correct.

Q. Now, you spoke to Lee about having been in the restaurant?

A. When is this you are talking about?

Q. January 29th?

A. January 29th.

Q. Did you ever speak to Lee in the month of January?

A. No; the only time I spoke to Lee was the day of the arrest.

Q. February 6th?

A. February 6th.

Q. When you spoke to Lee on February 6th, did Lee tell you he had been in the restaurant?

A. He told me he had not been in the restaurant.

Q. So you knew he was lying?

A. I did.

Q. Subsequently you brought him down to see Mr. Singer?

A. Yes, sir.

Q. Now, in the presence of Mr. Singer didn't Lee tell Mr. Singer that he had lied to you, that he was in the restaurant?

A. That is right.

Q. And didn't Lee tell you the reason he lied was because of the fact he was on parole?

A. I believe he did say that.

Q. Didn't he say that to Brother Singer?

A. I do not recall it, but there was something about parole, and I know since then he told me the same.

Q. You know from the conversation with Lee he is on parole from Sing Sing?

A. That is right.

Q. And he told Mr. Singer he did not tell you the truth because of the fact he was on parole and it was a violation of parole to consort with a man of the character of Mr. [fol. 266] Katz?

A. I believe that is so.

Q. And you were present when he spoke to Mr. Singer?

A. I was.

Cross-examination.

By Mr. Wegman:

Q. The time you met Katz at the Daily News office, had any complaint been made to your office that Katz was passing counterfeit money?

A. Not that I know of.

Q. So far as you know, Katz came to you voluntarily and offered this information against these other people, is that right?

A. I met him through Mr. Connelly, yes, sir.

Q. He came there and told you this story?

A. Yes, he did.

Q. You did not put him under arrest, did you?

A. No, I did not.

Q. When was it you put him under arrest?

A. February 5th.

Q. That was well over two weeks after the first time that you met him?

A. That is right.

Q. And in that interim he was giving you information from time to time?

A. He was.

Q. To the best of your recollection he told you when he met you at the Daily News office that he knew Berger as an ex-convict and he knew Berger as a man he had met at Sing Sing, is that right?

A. To the best of my recollection he told me that.

Q. He appeared to be very bitter against Mr. Berger, did he not?

A. He did not. The only thing he told me at that time [fol. 267] was that Berger tried to put him on the spot.

Q. That was January 18th?

A. That was on the 18th, yes, sir.

Q. When in the course of preparing your case against these defendants you decided to make your arrest, you did not go out to arrest Berger, did you?

A. No, I did not.

Q. You called him on the telephone and told him you would like to see him, and he came to your office at the Custom House?

A. No, I had Miss Talle call him.

Q. He came right down to your office?

A. He did.

Q. You did not have to send for him?

A. I did not.

Q. When he came you searched him?

A. I did.

Q. You did not find counterfeit money on him?

A. I did not.

Q. In the course of your check-up in your investigation you did not find anybody anywhere at any time outside of this little group of defendants who said that they ever saw Berger with any counterfeit money, or ever heard of him having counterfeit money, or passing any counterfeit money?

A. No, only the defendant.

Q. Outside of this little group you never heard of anybody who ever saw Berger with counterfeit money or knew of Berger having anything to do with counterfeit money?

A. No, I did not.

Q. Now, Mr. Godby, among these defendants you took statements from Miss Molnar and from Miss Talle?

[fol. 268] A. I did.

Q. And you took those statements on——

A. February 1st.

Q. What day of the week was that, do you remember?

A. February 1st——

Q. Well, that was a Thursday?

A. It was a Thursday.

Q. When next after February 1st did you see Miss Talle and Miss Molnar again?

A. February 4th.

Q. That was abont one o'clock in the morning?

A. About one o'clock in the morning.

Q. Sunday morning?

A. Sunday morning.

Q. They came to you at your place of residence?

A. My mother's home. They 'phoned me first and made an appointment.

Q. Did they talk to you about Berger at that time?
A. They did.
Q. Did they tell you at that time Berger had never had anything whatsoever to do with counterfeit money?
A. They did.

Mr. Singer: Now, if your Honor pleases, at this point your Honor refused to permit me to read these statements.

The Court: Yes, I thought they applied only to the two women, but if he is going into them, he is opening the door.

Mr. Wegman: I have made no reference to the statement except ask the date it was taken. I have made no other reference to the statement.

[fol. 269] The Court: I think maybe that is so, but if you are going to enlarge——

Mr. Wegman: I have not. I know Mr. Singer is anxious to get it in the back door.

Mr. Singer: There is no back door in this court room, my friend.

Q. Now, Mr. Godby, aside from your conversation with Miss Molnar and Miss Talle about Mr. Berger, the only other person who at any time said that Berger had ever had anything to do with this money or knew anything at all about this money is the defendant Katz, is that so?
A. That is right.

Redirect examination.

By Mr. Singer:

Q. You have just said that besides Katz, Miss Molnar and Miss Talle, nobody else said Berger had anything to do with counterfeit money?
A. That is right.
Q. And Miss Molnar and Miss Talle did say——

Mr. Wegman: I object.

The Court: You opened the door.

Mr. O'Neill: He cannot open it for us.

Mr. Wegman: I object on the ground the door was not opened. I asked this witness about a conversation he had with these two defendants three days after the day of that statement. The only reference to the statement was to fix a time. There is no reference of any kind, or statement

or inference of mine in cross-examination that had to do [fol. 270] with the statement except to fix the date.

The Court: Overruled.

Mr. Wegman: Exception.

Mr. Crooks: On behalf of Jones——

The Court: It does not bind him. These were offered against these people only. The question was asked about statements made somewhere else, and the consequence is these statements are in evidence.

Q. Tell me what they said to you.

Mr. Kroopff: I object to the generalization "they."

Q. Miss Talle and Miss Seigal.

A. Miss Talle and Miss Seigal both told me that they were present in the apartment at 350 West 57th Street when Jack Katz delivered the counterfeit bills to Harry Berger, who in turn handed them to the defendant Jones.

The Court: That does not bind Berger; it does not bind Jones. It is simply taken on the question here of what these defendants themselves said.

Mr. Singer: With one exception, in so far as it relates to his answer as to the fact nobody besides these girls told him anything about him, it shows what these girls said about him.

The Court: It does not bind the defendants Jones or Berger because they were not present. It only goes as to [fol. 271] the credibility of these two defendants when they made the statement, and when they made the subsequent statement to him.

Q. Now, as it now stands, first these two ladies, Miss Seigal and Miss Molnar, signed written statements that Berger was there when the notes were passed, and then two days later they told you he was not there when the notes were passed, is that correct?

Mr. Kroopff: I object.

The Court: That is what he said.

Mr. Kroopff: It is neither proof——

The Court: I have already instructed on that. Once is quite sufficient.

A. They did.

Q. Now, when you first saw Katz at the office of the News, Katz was not under arrest, was he?

A. He was not.

Q. He came to you voluntarily?

A. He did.

Q. His business with Mr. Connelly you do not know or did not know before you came there?

A. Before I came there, no.

Q. Now, Katz was not obliged to give you any information, was he?

A. He was not.

Q. The fact of the matter is that Connelly told you that he had met somebody who, in the course of another investigation, had mentioned counterfeit money and thought the Secret Service should investigate it?

A. That is correct.

[fol. 272] Q. And the moment the investigation dealt with counterfeit money, Connelly stepped out and let the Secret Service handle it?

A. Yes, sir, that is right.

Q. And from the time you started to talk to Katz, Connelly and the News had no further part in the investigation at all?

A. That is correct.

Q. Now, there is talk about your promise to Mr. Katz. As a matter of fact, didn't you bring all the defendants to the District Attorney's office to my room in this building?

A. I did.

Q. And lay all the evidence before me?

A. I did.

Q. Did I examine all the defendants who were then present on the 5th?

A. You did.

Q. Talked to each one?

A. Yes.

Q. And after I talked to them, then they were placed under arrest?

A. That is correct.

Q. Prior to that time you had brought them over for the District Attorney to determine whether legally they should be arrested?

Mr. Kamber: I object.

The Court: That is rather involved, and calls for the operation of your mind, which he cannot understand. He said he brought them over for you to examine.

Q. And they were not arraigned before the United States Commissioner until after they had been examined?

A. That is correct.

Q. Now, Katz was arraigned as well as the other de- [fol. 273] fendants?

A. He was.

Q. Katz made a statement to you on various occasions before he was brought into the District Attorney's office?

A. He did.

Q. He made a statement when he was in the District Attorney's office?

A. He did.

Q. Do you know what type of an investigation Mr. Connelly was engaged in with Mr. Katz prior to the time that you met him?

A. On some kind of alienation of affection suit.

Q. It had nothing to do with this matter at all?

A. It did not, no crime at all.

Q. Katz freely gave you this information?

A. He did.

Q. When you first talked to him on the 19th, all that you had was his statement that bills had been passed, isn't that correct?

A. On the 18th, yes.

Q. And then later, as the investigation continued, you actually found the bills?

A. I found them on the 19th. They were in our office, just as he said.

Q. And you checked his information very carefully?

A. I did.

Q. You became convinced—and I ask you this, and I ask you what Mr. Kamber asked you—that he was telling you the truth?

A. I did.

Mr. Kamber: I move to strike that out.

The Court: What?

Mr. Kamber: What he became convinced of.

The Court: You asked him whether he believed him or [fol. 274] not. He may ask him the same question. You opened the door.

Q. You became convinced he was telling the truth about this case?

A. I did.

Q. And you checked everything you possibly could check, you felt you did that?

A. I did.

Q. And everything pointed indisputably to the fact that Katz was telling the truth?

A. It did.

Q. Whether he was a convict or not?

A. That would not make any difference. I cannot get my information out of church.

Recross-examination.

By Mr. Kamber:

Q. And you became convinced, didn't you, in your 15 years' experience, when a convict is caught red-handed, as he made a statement to you, he was trying to save his own neck and nobody else's, isn't that right?

Mr. Singer: There is no proof he was caught red-handed.

The Court: That perhaps does not describe the situation.

Q. You have had an experience of 15 years, haven't you?

A. Approximately.

Q. And your experience has been that one of these fellows who passes counterfeit coins, or who has anything to do with counterfeit coins, when he is an ex-convict, as in this case, that he saves himself first?

A. Not necessarily.

Q. And he tells you a story to deliver as many people as he possibly can so as to give some consideration to the [fol. 275] fact that he has been charged with a crime?

A. I have not heard of a delivery here.

(Witness excused.)

JOHN J. FITZGERALD, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination.

By Mr. Singer:

Mr. O'Neill: Would your Honor mind granting a few moments' recess?

The Court: Surely. We will take a recess of three or four minutes. If you want to step out, Gentlemen, do not let anybody talk to you about the case.

(Short recess taken.)

Q. Mr. Fitzgerald, you are a Secret Service operative?

A. I am.

Q. How many years have you been connected with the United States Secret Service?

A. 19 years.

Q. During that time, Mr. Fitzgerald, you have testified in many criminal cases involving counterfeit money?

A. Quite a few.

Q. You have made a study of counterfeit money and genuine money?

A. I have.

Q. You testify in many courts throughout the county?

A. I have.

Q. You were present at the various times in this investigation that Mr. Godby stated you were, is that cor- [fol. 276] rect?

A. Yes, sir.

Q. You were present at other stages of the investigation when Mr. Godby was not in New York?

A. I was.

Q. I show you Government's Exhibit 1 for identification and I ask you, sir, whether that is a genuine $100 Federal Reserve note of the Federal Reserve Bank of Chicago, Illinois, or whether it is a counterfeit Federal Reserve note?

A. It is a counterfeit.

Q. I show you Government's Exhibit 2 for identification and I ask you, sir, whether that is a genuine or counterfeit note of the same Federal Reserve Bank?

A. Counterfeit.

Q. I show you Government's Exhibit 5 for identification and I ask you, sir, whether that is a counterfeit Federal Reserve note of the Federal Reserve Bank of Chicago, Illinois?

A. Counterfeit.

Q. I show you Government's Exhibit 7 for identification and ask you, sir, whether that is a counterfeit Federal Reserve $100 circulating note of the Federal Reserve Bank of Chicago?

A. Counterfeit.

Q. I show you the six notes which form Government's Exhibit 6 for identification and I ask you, sir, whether those six notes are counterfeit Federal Reserve notes of the same Federal Reserve Bank?

A. They are.

Q. Those six notes I have shown you which form Government's Exhibit 6 are counterfeit?

A. All counterfeit.

Q. Now, Mr. Fitzgerald, at my request have you compared all of the bills which I have just shown you, that is, [fol. 277] Government's Exhibits 1, 2, 5, 6 and 7 for identification?

A. I have.

Q. Have you compared one with the other?

A. I have.

Q. You have compared them under a magnifying glass?

A. I have prior to this, not now. I have examined them for counterfeit. If you want me to examine them for something else——

Q. Will you examine those bills and then can you tell me whether all of those bills were printed from the same plate?

Mr. Kamber: I thought he examined them before? Does he have to examine them again?

The Witness: I have, but I want to see that these are the same bills.

The Court: Go ahead. There is no question except the one before you.

A. These bills were all struck from the same plate.

Q. No question about it in your mind?

A. No.

Mr. Singer: They are all offered in evidence under the same numbers they were marked for identification.

Mr. Crooks: I specifically object to the introduction of Government's Exhibit 1 marked for identification as against the defendant Jones, on the ground the Govern-

ment has failed to connect him with passing that specific bill.

The Court: No, there is a question of a charge of con-
[fol. 278] spiracy with relation to all of them.

Mr. Singer: Government's Exhibit 1 was the note the testimony said was passed by Jones directly.

The Court: Yes, objection overruled; you have an exception.

Mr. Crooks: That bill as I recollect the testimony, got out of his possession and he turned it over to somebody else, and Mr. Singer attempted to call somebody from the bank and the bank said he never saw the bill.

Mr. Singer: Agent Kett testified he had received the bill from the man who got it from Carros, who gave him the bill.

Mr. Crooks: I make the same objection to Government's Exhibit 2.

The Court: Overruled and exception.

Mr. Crooks: Now I make objection, as far as Jones is concerned, to Exhibits 5, 6 and 7, on the ground there is no testimony here to connect Jones with any of those.

The Court: I will not limit you, but they are receivable anyhow on the charge of conspiracy. If conspiracy is established any act of the conspirators would be binding on the others. It is a question for the jury to determine, whether there was a conspiracy.

[fol. 279] Mr. Crooks: I except.

Mr. Kamber: I make an objection to the introduction of Government's Exhibit 5, on the ground that there is no direct evidence.

Mr. Singer: Exhibit 5 was the bill pased over at Nat Lewis' store.

Mr. Kamber: Your Honor will remember Nat Lewis testified he was not there and did not know if that was the bill that was passed. There is no evidence here connecting Rice.

The Court: I did not just understand his testimony.

Mr. Singer: It was solely a question of the substantive offense. There is no vagueness in these counts. I connected this bill by this witness and Katz' testimony. He was there when it was passed.

The Court: It is on the question of conspiracy if there was one.

Mr. Kamber: I will take an exception and I will object to all these bills going in evidence as against the defendant Rice on the ground they are not connected, and there being no evidence to bind him.

The Court: Overruled.

Mr. Kamber: Exception.

(Government's Exhibits 1, 2, 5, 6 and 7 for identification now marked Government's Exhibits 1, 2, 5, 6 and 7 in evidence.)

[fol. 280] Q. Now, Mr. Fitzgerald, I show you Government's Exhibit 4 for identification, which contains 16 notes, $20 denomination, of the Federal Reserve Bank I think of Dallas, Texas.

A. Yes.

Q. Will you examine those notes and tell me whether they are genuine or counterfeit?

A. All counterfeit.

Q. Now, after you have examined those $20 notes, can you testify whether, in your opinion, they were all struck from the same plate?

A. They have been. I examined them before. They are all pinned together.

Mr. Singer: They are offered in evidence as Government's Exhibit 4.

The Court: Same objection?

Mr. Crooks: Yes, your Honor.

The Court: Objection by Mr. Kamber for Rice and Mr. Crooks for Mr. Jones. The objections are overruled, and you have an exception.

(Government's Exhibit 4 for identification now marked Government's Exhibit 4 in evidence.)

Mr. Singer: Your witness, Gentlemen.

(No cross-examination.)

Mr. Singer: That is the Government's case.

Government rests.

[fol. 281] MOTIONS TO DISMISS

Mr. O'Neill: If your Honor please, I move for the dismissal of the indictment as against the defendants Molnar and Seigal. The only evidence, and I think your Honor is

familiar with the entire evidence, that went in——

The Court: I heard it all. Is there objection? Does the District Attorney want to be heard?

Mr. Singer: As to Molnar and Seigal, I feel the two papers offered in evidence are confessions, and sufficient to go to the jury with on those two defendants.

The Court: You should not have argument now.

Mr. Singer: As to only one defendant do I consent to a motion to dismiss when it is made.

Mr. Davis: May I make a motion to dismiss each and every count of the indictment and the indictment as a whole against the defendant Ray Smorgan Katz?

Mr. Singer: To that the District Attorney will say there is no proof up to this time.

The Court: Motion granted.

Mr. Hogan: On behalf of the defendant Lee I make the same motion, the ground being there is no evidence which tends to connect Lee with the conspiracy or counterfeit money. The Government's principal witness, Katz, has testified Lee knew nothing about it.

[fol. 282] The Court: Do not argue. Just make your motion. Does the District Attorney want to argue that?

Mr. Singer: I am inclined, if your Honor feels so disposed——

The Court: I am only asking do you want to argue it?

Mr. Singer: I would rather wait until the jury is excluded.

Mr. Hogan: Will your Honor reserve ruling?

The Court: Yes. I want the motions made in the presence of the jury and argument afterward.

Mr. Wegman: I move for a dismissal of the indictment against Berger. I have some argument I would like to make on that.

The Court: I reserve decision, if the District Attorney wants to argue after the jury goes out.

Mr. Crooks: I move to dismiss the indictment particularly as it refers to Counts 1 to 6 inclusive, and also as to 7, 8 and 9, if your Honor pleases, on the ground there is not sufficient evidence to connect the defendant Jones.

The Court: I deny your motions and give you an exception to each one of them.

Mr. Crooks: Would your Honor hear me on those first counts later on?

The Court: If you want to be heard.

Mr. Kamber: I want to make a motion to dismiss the [fol. 283] entire indictment, and would like to point out one or two propositions.

(The jury was excused while argument on the motions was had.)

(The jury returned.)

The Court: The motion to dismiss as to the defendant Jack Rice is denied as to each and every count, and an exception is allowed as to each separate denial, and he will be held on all counts of the indictment.

As to the defendant Berger the motion to dismiss is granted as to Counts 1, 2, 3, 4, 5 and 6, and dismissed as to him, and he will be held on Counts 7, 8 and 9.

As to the defendant George Lee, the evidence offered is not, in my judgment, sufficient to submit his case to the consideration of the jury and the motion to dismiss the indictment as to all counts as to him is granted.

As to the defendant Edward Jones, the motion to dismiss as to Counts 1, 2, 3, 4, 5 and 6 is granted. It is denied as to Counts 7, 8 and 9, and he will be held as to them, and it was also denied as to Counts 7, 8 and 9 as to Berger.

As to the defendant Ray Smorgan Katz, that has been disposed of. The indictment has been dismissed.

As to the defendant Angela Joyce Molnar, I do not think [fol. 284] the evidence is sufficient to submit her case to the jury. The evidence is not so convincing that the jury should pass on it, and the indictment as to all counts is dismissed as to her.

As to the defendant Audrey Jean Seigal, I do not think the evidence is sufficient to submit her case to the jury, and the indictment will be dismissed as to all counts as to her.

Mr. Wegman: I move to strike from the evidence the exhibits consisting of the statements made by the two defendants who——

The Court: I have to leave them in as justification for dismissing them. I think that was the strongest evidence offered, but I will not submit it to the jury as against any of these defendants.

Mr. Singer: As a matter of fact, the Government will state it shall not submit those exhibits, nor shall it read or quote from them.

The Court: I must keep them in because they form the strongest justification for the dismissal as to those defendants.

Mr. Wegman: May we have a recess for a few moments, your Honor? We want to have an opportunity to confer between counsel. There has been a change in the situation.

The Court: Yes.

(Counsel confer.)

[fol. 285] The Court: Have you agreed now on the order in which you are going to proceed?

Mr. Wegman: Yes. I waive opening, your Honor.

The Court: I do not know whether it is of any moment to you, but some of you gentlemen did not take exceptions. I am allowing you gentlemen an exception to each of the denials of the motions to dismiss.

Arnold Gross, called as a witness on behalf of the defendant Berger, having been duly sworn, testified as follows:

Direct examination.

By Mr. Wegman:

Q. Mr. Gross, what is your occupation?

A. Lawyer.

Q. How long are you a member of the Bar?

A. Thirty years.

Q. You are a member of the Bar of all the courts of this State?

A. Yes, and the Federal court too.

Q. You are acquainted with Harry Berger, who is one of the defendants in this case on trial?

A. I am.

Q. Do you know the reputation of Harry Berger in the community in which he lives?

A. I do.

[fol. 286] Q. Do you know his reputation in the business in which he is engaged?

A. I do.

Q. Do you know what his business is?

A. Real estate and management of properties.

Q. What is his reputation?

A. Good.

Q. Do you know whether or not the people with whom he has done business have confidence in him?

A. They certainly have.

Q. Do you know whether his business and the management of property has been extensive?

A. Yes.

Mr. Singer: I do not care about that.

The Court: You did not object. Of course you are not limited to questions of his reputation.

Q. Do you know what his reputation for honesty is?

A. It is good.

Q. Has there ever been anything come to your notice in the last eight or nine years which in any way would indicate that his reputation was anything but the best?

A. None at all; nothing.

Cross-examination.

By Mr. Singer:

Q. He is not a lawyer, is he, this man you are talking about?

A. Mr. Berger?

Q. Yes.

A. Not as far as I know.

Q. He does not practice law?

A. Not as far as I know.

Q. Did you ever hear he went around and told people he was a lawyer?

[fol. 287] Mr. Wegman: I object. There is no evidence of any such thing.

The Court: Someone said he thought he was a lawyer.

Mr. Singer: Miss Goldstein said he said he was a real estate lawyer.

Mr. Wegman: My recollection is Miss Goldstein said she thought he was.

The Court: I think that is so.

Q. Did you ever hear he went around and said he was a real estate lawyer?

A. I never heard anything of that.

Q. If you did, of course, it would change your opinion?

The Court: All right; he said he did not.

Q. If you did, it would change your opinion about his reputation?

A. If he said he was a lawyer and he was not, that certainly would not induce any confidence in him.

Q. You say you know he held a license as a real estate broker?

A. I did not say anything about license.

Q. Do you know he held a license?

A. I never asked him to exhibit it. I assumed he was.

Q. That he was a licensed real estate broker?

A. Whether he was a real estate broker or associated with a real estate broker and held a salesman's license, I did not know.

[fol. 288] Q. You know you cannot do business in real estate in the State of New York either as a salesman or principal without holding a license, you know that?

A. You are supposed to have if you are holding yourself out as a real estate broker, you are supposed to have a real estate broker's license. If you are operating under a real estate broker, then you only require a salesman's license.

Q. License, and you also know, Mr. Gross, that such licenses are not given to anybody who has been convicted of a felony; do you know that?

A. I really do not know that.

Q. You say you are a lawyer and you don't know that?

A. No, I do not profess to know the regulations under which real estate brokers' licenses are issued to the last detail. I assume they are given to people of good moral character.

Q. And a person convicted of a felony is not of good moral character where the felony is one which involved moral turpitude, like robbery, is that not correct?

A. That probably is so.

Q. Let us not hedge.

A. I am not hedging, Mr. District Attorney. I am trying to answer your questions the best way I can.

Q. Do you know this defendant was convicted of robbery and served a term in Sing Sing?

A. I did hear it about ten years ago.

Q. When did you hear that?

A. About that time.

Q. Ten years ago?

A. Yes, sir, about the time the conviction was had.

[fol. 289] Q. And you know he went to Sing Sing and served time there?

A. I knew he went to jail.

Q. And yet you come here and testify even in spite of that he had a reputation for honesty, veracity and truthfulness?

A. Yes, among the people who knew him said so, and I still maintain that is so.

Q. If I were to tell you in order to obtain a real estate license it was necessary—you know it was necesary for a man to apply for it in writing?

A. It would be.

Q. You know that one of the questions which is asked of an applicant is whether he had been convicted of an offense before, and if I told you the defendant stated in this application that he had not been convicted——

The Court: You cannot tell him what was stated. If——

Q. If this defendant had stated in that application that he had never been convicted, would you still say that he was a person of good moral character and that his reputation for truthfulness was good?

A. I do not suppose it would affect his reputation. That would affect simply his own inherent character, but not his reputation.

Q. In other words, you say if he lied in an application, it would not make any difference in your testimony about his character?

A. I did not say that.

Q. If he did lie, would that make a difference?

[fol. 290] A. If he had lied in an application I would say it was a wrong thing for him to do.

Q. And therefore he was not a person who was truthful?

A. Not necessarily. It naturally follows he would not be truthful.

Mr. Singer: That is all.

The Court: Gentlemen, the questions asked him as to the statements that might be in the applicaton are not statements of fact. You cannot take that as a fact, and it is no

proof of any such fact. It is an inquiry to this witness to test his idea of character and reputation.

Redirect examination.

By Mr. Wegman:

Q. Now, Mr. Gross, assuming that at the time that a young man just over twenty or about twenty-one years of age got into some difficulties with the law, for which he paid a penalty to the State, and had thereafter lived a life that was absolutely exemplary, and had the good will——

Mr. Singer: This man is not an expert on character. He is assuming nothing. The fact of the matter is there is no such proof.

Mr. Wegman: Cross-examination by the District Attorney has established the right of this man to state under certain conditions what he would assume.

The Court: It might be stated in another way.

[fol. 291] Mr. Singer: Go on; ask in your way.

The Court: I will let him ask. It might be stated in another way. As I understand it, the sum total of it is you want him to state whether a man can have good reputation by good conduct for a number of years after he has committed an offense and paid the penalty.

Mr. Wegman: It goes a little farther than that.

The Court: Go ahead, then, put it your way.

Q. (Continuing:) And assuming that his life after he was released from prison, after paying his penalty to the State, had been, as I said, exemplary, and his reputation among his neighbors was excellent and that he was establishing for himself in the community a good name, would you consider that that man had done something to forfeit that good name if years after the commission of that offense as a youngster he was so ashamed of his past that he did not freely set it forth to the world——

Mr. Singer: If that is not ridiculous. I never heard anything like it, and if I had not objected I would have laughed.

The Court: If you want to ask whether a man can create a good reputation after he paid the penalty, that is one thing.

Mr. Wegman: I cannot ask that.

[fol. 292] The Court: Why, of course, you can ask it.

Mr. Wegman: He already said he had a good reputation, but the District Attorney asked the witness——

The Court: Your question is too involved.

Q. Now, Mr. Gross, if we assume the situation mentioned by the Assistant United States Attorney that if a man made an application for a real estate broker's license and neglected to state a conviction had many years ago for a felony, you said that might change your opinion, is that correct, your personal opinion?

A. I said it might have some bearing on my opinion.

Q. Now, then, if, under that state of facts, there was this additional situation, that after that conviction the man had led a life that had won him the respect of his neighbors——

Mr. Singer: There is no such proof in this record.

The Court: He said he had a good reputation.

Mr. Singer: There is nothing about respect of neighbors.

The Court: That he gained a good reputation.

Mr. Singer: Let us confine it to that.

The Court: That he gained a good reputation.

[fol. 293] Q. (Continuing:) Would it cause you to change your opinion of him if he did not advertise the fact that many years ago in his life he had made a mistake?

A. I would not wholly justify his making a false statement in the application, but I would say frankly that I think there might be some extenuating circumstances, because it is quite natural for persons not to advertise any previous disgrace of that kind. It is quite natural. I should think, under some circumstances, to do it. I would not say I would wholly justify such a course of conduct.

Q. You knew ten years ago that Harry Berger had gone to jail?

A. Yes, I did.

Q. And you have known him ever since he came out?

A. I have.

Mr. Singer: We have been over this before.

Q. In your opinion is he honest and trustworthy?

Mr. Singer: We have had that, and this witness' opinion is not admissible. It is only his statement of what others know about him.

The Court: It is not his personal opinion. It is his reputation in the community.

Mr. Wegman: He was asked his present opinion on cross-examination. I think the District Attorney has opened the door.

[fol. 294] Mr. Singer: I asked if that would change his testimony.

The Court: That is as to whether he would have a good reputation, whether that would cause him to say his reputation was not as good as he said before.

Q. You had all that in mind when you testified before that his reputation was excellent?

A. Yes, and based on my personal knowledge as to what the man's reputation has been in the community during the past ten years, and I said I found it absolutely excellent in every respect.

Recross-examination.

By Mr. Singer:

Q. You say you based it on your knoweldge, but you did not know about the false statement in the application for a real estate broker's license?

A. I do not think——

Q. Do you know he made an application to carry a gun to the Police Department and made the same false statement in that application?

Mr. Wegman: I object to the form.

The Court: The question is not whether he knows it. Let us get this straight. You ask these questions, but they are not proof of the facts, and therefore the proper way to ask him is, if he had learned these things would it change the man's reputation.

[fol. 295] Q. If you had learned, Mr. Gross, that this defendant had applied for a license to carry a gun from the Police Commissioner of the City of New York, and had stated in that application that he had not been convicted of a crime, when, as a matter of fact, he had been convicted of robbery, would that change your opinion about his good character?

Mr. Wegman: I object to the question.

The Court: Overruled, and you have an exception. This is not proof of the fact. He is asking him whether that circumstance would change his testimony.

A. That stands on exactly the same footing as the application for a license for real estate.

Q. You think the application for a license to sell real estate and the application to carry a gun stands on the same footing?

A. No, I say the moral character of that act would be on the same basis.

Q. If you knew that this defendant was arrested for the crime of perjury in the Queens County Court before you testified here today, would that make a difference to you about your testimony concerning his good character in the community?

Mr. Wegman: I again object to the question and call your Honor's attention to the fact that the District Attorney [fol. 296] knows it is absolutely improper, and knows that the Grand Jury in the County of Queens refused to indict on that charge.

Mr. Singer: My friend, you are doing a lot of talking that has nothing to do with the case. There is no such proof.

The Court: This does not stand on the same basis as to an interrogation directed to the defendant. This stands on an entirely different basis, and he may ask if he ever heard he was arrested on the question of character.

Mr. Wegman: It is a back-handed, reprehensible——

The Court: Pardon me, this Court has passed on the question.

Mr. Wegman: I take exception to the District Attorney's remark.

The Court: I did not hear it. The jury will disregard such incidents.

Mr. Wegman: I would like the remark of the Assistant United States Attorney to appear in the record.

The Court: I did not hear it. It is not the thing for counsel to address the Court with somebody standing alongside——

Mr. Wegman: May I ask your Honor to ask the jury whether they heard the remark?

The Court: I ask the jury to disregard it. I do not think [fol. 297] they heard it. I did not and I tell them to disregard remarks of counsel.

Mr. Singer: That is all.

The Court: All right, then, the question is withdrawn.

(Witness excused.)

BENJAMIN ANTIM, called as a witness on behalf of the defendant Berger, having been duly sworn, testified as follows:

Direct examination.

By Mr. Wegman:

Q. What is your occupation?

A. Attorney and counsel-at-law.

Q. How long have you been a member of the Bar?

A. Since 1913.

Q. You were Senator of the State of New York?

A. I was for eight years.

Q. Are you acquainted with the defendant, Harry Berger?

A. I am.

Q. How long have you know him, Senator?

A. I know him about six or seven years.

Q. Do you know his reputation in the community in which he resides?

A. I do.

Q. Do you know the business in which he is engaged?

A. I had business transactions with him and his brother for a number of years.

Q. Senator, will you tell his Honor and this jury, please, [fol. 298] what the reputation of the defendant, Harry Berger, is?

A. As far as I know, very good.

Q. Have you ever heard anything from any of the people that are acquainted with him or anyone with whom he ever did business that would cause you to change that opinion?

A. No, sir.

Cross-examination.

By Mr. Singer:

Q. You did not know about the counterfeit money charge, did you?

A. I did not know anything about any charge until today.

Q. And you did not know the defendant was calling to see a girl named Talle at an apartment on 57th Street?

A. It is nothing unusual these days for young men to call on young ladies.

Q. You did not know it?

A. No.

Q. You did not know he was friendly with Katz, whom everybody says is an ex-convict?

A. No.

Q. Did you know this man was convicted of an offense before, for robbery?

A. I did not.

Q. Burglary?

A. I did not.

Q. And the fact of the matter is, he is a man you did business with and he never cheated you?

A. No.

[fol. 299] Redirect examination.

By Mr. Wegman:

Q. Did he ever cheat anybody, as far as you know?

A. No.

Q. One more question: During all the time you have known Harry Berger did you ever know him to wear a mustache?

A. Never.

(Witness excused.)

Richard Epstein, called as a witness on behalf of the defendant Berger, having been duly sworn, testified as follows:

Direct examination.

By Mr. Wegman:

Q. Mr. Epstein, what is your occupation?

A. Real estate.

Q. How long have you been in that business?

A. Twenty-two years.
Q. You know the defendant, Harry Berger?
A. Yes, sir.
Q. How long have you known him?
A. About six years.
Q. Have you had business dealings with him?
A. I have.
Q. Are you acquainted with other people who have had business dealings with him?
A. Yes, sir.
[fol. 300] Q. Are you acquainted with people in his community?
A. Yes, sir.
Q. Will you tell his Honor and this jury, please, what the reputation of Harry Berger in his community is?
A. To my knowledge it has been all right.
Q. Have you ever heard anything from anybody who has ever had any business dealings with Harry Berger, or who had anything to do with him, that would cause you in any way whatsoever to change that opinion?
A. Never heard anything bad about him.
Q. You have employed Harry Berger?
A. He has been in my office.

The Court: That is not just an answer. He asked you if you ever employed him.

The Witness: Yes, sir, in a way he has been associate broker with us.

Q. And you have therefore had occasion to deal with people with whom he dealt?
A. That is right.
Q. And was their opinion of him uniform, I mean, was it all the same?
A. Yes, sir, all good.
Q. What was that opinion?
A. All good.
Q. Now, in all the time you have known the defendant, Harry Berger, have you ever seen him with a mustache?
A. No.

[fol. 301] Cross-examination.

By Mr. Singer:

Q. As far as he was doing business all day, everything was all right, you say?

A. Yes, sir, sure.

Q. You do not know whether he was engaged in any other business at night in New York?

A. Not to my knowledge.

Q. You do not know?

A. No.

Q. Did you have anything to do with him in January of this year or December of last year?

A. Yes, we had business together.

Q. You had business together?

A. Yes, sir.

Q. How long do you know this man Berger?

A. About six years.

Q. That is all?

A. That is all.

Q. Did you know he was convicted of robbery?

A. No.

Q. He never told you that?

A. No.

Q. You knew he had a license to be a real estate broker?

A. Yes, sir.

Q. You know that a man——

A. Pardon me, I want to correct that. At the time I knew him he was with his brother, who was also in the real estate business.

Q. I am not interested in that.

A. I do not know whether he had a license in his own name.

Q. You do not know whether he has a license today, do you?

A. No.

Q. Were you with him any night in December or January of this year in Manhattan?

A. No.

Q. Did you know he knew a man named Jones?

A. No, I did not know.

[fol. 302] Q. Did you know he knew a man named Katz?

A. No.

Q. Did you know that he was ~~in~~ the habit of consorting with some women in some apartment in Manhattan?

A. No, I did not know anything about it.

(Witness excused.)

DAVID DINNERSTEIN, called as a witness on behalf of the defendant Berger, having been duly sworn, testified as follows:

Direct examination.

By Mr. Wegman:

Q. What is your occupation?
A. Real estate.
Q. How long have you been in that business?
A. About five or six years.
Q. Do you know the defendant, Harry Berger?
A. I do.
Q. How long?
A. About three or four years.
Q. Have you had business dealings with him?
A. Yes, sir.
Q. Do you know his reputation in the community in which he lives and in which he does business?
A. Yes, sir.
Q. What is that reputation?
A. As far as I know it was O. K.
Q. You have employed Harry Berger to do work for you, have you not?
A. Yes, sir.
Q. Among other things, you employed him to manage property of yours, didn't you?
A. Yes, sir.
[fol. 303] Q. And to collect the rents, is that right?
A. Yes, sir.
Q. And he has collected for you in rents over $15,000 in the period of two months, isn't that right?
A. I would say between $12,000 and $15,000. I would not make it just $15,000.
Q. In a very short period of time?
A. About two months.
Q. And you trusted him with that?
A. I did.
Q. You never found any reason to question his handling money?
A. No.
Q. Have you heard anybody whatsoever ever question his honesty or trustworthiness, so far as money was concerned?
A. No.

Q. Have you ever heard anything from anybody in the community in which he lives or does business that would reflect on him in any way whatsoever?

A. I did not.

Cross-examination.

By Mr. Singer:

Q. You are not with him day and night?

A. No.

Q. You were not with him every day and night in December last year and January this year?

A. No.

Q. You do not know whether he went out and handled counterfeit money?

A. No.

Q. You do not know anything about it at all?

A. No.

(Witness excused.)

The Court: We will take a recess now.

[fol. 304] Gentlemen, do not allow anybody to talk to you about the case, do not discuss it among yourselves, do not form any opinion until it is finally submitted to you. Recess until tomorrow morning at ten-thirty.

Adjourned to March 21, 1934, at 10:30 A. M.

Brooklyn, N. Y., March 21, 1934.

Met pursuant to adjournment at 10:30 A. M.; present as before.

Milton Istrick, called as a witness on behalf of the defendant Berger, having been duly sworn, testified as follows:

Direct examination.

By Mr. Wegman:

Q. Mr. Istrick, what is your occupation?

A. Appraiser for the United States Government, real estate.

Q. What business were you in before that?
A. Real estate broker.
Q. Do you know the defendant, Harry Berger?
A. I do.
[fol. 305] Q. How long have you known him?
A. About six years.
Q. Do you know his reputation in the community in which he resides and in which he conducts his business?
A. I do.
Q. What is that reputation, Mr. Istrick?
A. So far as I know, his reputation is of good character, honorable and respected.
Q. Are you acquainted with people that have had business dealings with him?
A. Yes, sir.
Q. Do you know what their opinion of him is?

Mr. Singer: Pardon me, I object. He has already testified about his good character.

The Court: I think in your direct examination, with a character witness, you are limited to inquiring as to his character.

Q. Mr. Istrick, have you ever heard anything at all from any person that ever did business with Harry Berger that would in any way reflect upon his character?

Mr. Singer: He has already testified to his character.

The Court: That is all right. This is negative. He may bring this out.

A. I did not.

Mr. Wegman: That is all.

[fol. 306] Cross-examination.

By Mr. Singer:

Q. Did you say you worked for the Government as a real estate appraiser?
A. That is right.
Q. You mean you are with the Home Owners' Loan Corporation?
A. That is right.
Q. This thing has only been going a couple of months?
A. It has been going about nine months.

Q. And you do what, public appraising?

A. Not for the public; I am employed by the Government.

Q. You were appointed by the Director of the particular bureau you are connected with?

A. And O. K.'d by the United States Government.

Q. You were never in this apartment over on West 57th Street, New York, with this defendant, were you?

A. No, sir.

Q. You do not know anything about what he did nights over in that apartment in the months of January, February, of this year, and December of last year?

A. Of course not.

Q. All you know about him is what he did there in his real estate business?

A. And also when I was with him socially.

Q. But he didn't take you over to these girls that he was consorting with over in New York?

A. No, sir.

Q. Were you over with him at any time?

A. Never was.

Q. You didn't know he knew Jones, did you?

A. Yes, I knew he knew Jones.

Q. Did you know he knew Katz?

[fol. 307] A. No, I don't know Katz.

Q. You didn't know that he was meeting Katz up there at an apartment five times a week, did you?

A. I do not know Katz.

Q. He didn't tell you about the fact that he knew Katz?

A. I never heard of Katz.

Q. I mean the defendant never told you he knew Katz?

A. No.

Mr. Singer: That is all.

Mr. Wegman: That is all.

(Witness excused.)

WILLIAM GLATZER, called as a witness on behalf of the defendant Berger, having been duly sworn, testified as follows:

Direct examination.

By Mr. Wegman:

Mr. Glatzer, what is your occupation?
A. I am an attorney.
Q. Admitted to practice in all the courts of this State?
A. Yes, sir.
Q. Do you know the defendant, Harry Berger?
A. I do.
Q. How long have you know him?
A. Eight or nine years.
Q. Have you had business dealings with him?
A. Yes, I have.
Q. Are you acquainted with people who deal with him in business?
A. I am.
[fol. 308] Q. Do you know his reputation in the community in which he lives and in which he does business?
A. I do.
Q. You are acquainted with people that know him outside of business as well as in business?
A. Yes.
Q. Will you tell his Honor and this jury, please, what the reputation of Harry Berger in his community is?

Mr. Singer: I object to what would be his reputation. His reputation for what?
I object to the form of the question.
The Court: Generally speaking, reputation for what, honesty, truthfulness?
Mr. Wegman: I will withdraw the question.

Q. Do you know the reputation of the defendant, Harry Berger, in his community for honesty?
A. I do.
Q. What is that reputation?
A. He is reputed to be honest by people that have dealt with him as I have dealt with him——

Mr. Singer: I object to that.
The Court: Is it good or not? That is the answer, is it good?
The Witnes-: It is good.

Q. Do you know his reputation for trustworthiness?
A. I do.
Q. What is that?
A. Good.
[fol. 309] Q. Do you know his reputation as to his general character?
A. Unimpeachable.
Q. What is that answer?
A. Unimpeachable, good.
Q. Have you ever heard anything in the eight or nine years in which you have known Harry Berger from any person that dealt with him or that knew him or that came in contact with him which in any way reflected upon his character?

A. I have heard nothing.
Q. Have you ever heard anything in all those eight or nine years from anybody that would cause you to believe that his reputation was anything but excellent?
A. No.
Q. Have you ever heard anything against him?
A. No.

Mr. Wegman: You may examine.

Cross-examination.

By Mr. Singer:

Q. You are limiting your answers to eight or nine years from now?
A. That is right.
Q. You knew that about ten years ago this man was convicted of robbery?
A. I did not.
Q. You didn't?
A. I did not.
Q. Was he in Queens nine years ago?
A. I believe he was.
Q. Are you certain of that now?
A. Quite certain.
Q. Tell me when you first saw him?
A. I met Harry Berger in connection with a real estate [fol. 310] deal; if my recollection serves me, it was in 1925 or 1926.

Q. Well, now you are down to 1926?
A. Yes.
Q. Before you were quite certain it was 1925, or nine years ago?
A. No, I said eight or nine years ago.
Q. All right. Did you know at that time he had been convicted of robbery?
A. I did not.
Q. That would be something against him, wouldn't it?
A. Yes——
Q. Is it or isn't it? Will you say so?
A. I am not here to state whether a conviction is against him.
Q. My dear sir, you stated to counsel that you never heard anything against him?
A. I did not.
Q. I ask you, sir, whether you would consider a conviction as something against him?
A. If I had known that he was convicted——
Q. Yes.
A. I might have been forewarned in dealing with him, but my subsequent dealings with him make it no different——
Q. I am not asking you that. Just confine your answer to my question, please.

The Court: If you will listen to the question, please.

Q. You stated before when counsel asked you that you never heard anything against him?
A. That is right.
Q. And I ask you whether a conviction would, in your mind, mean something against him?
A. Yes.
[fol. 311] Q. Now, you said he had a good reputation for honesty, for truthfulness, you said that, didn't you?
A. Yes.
Q. And if you didn't say it, you want to say now that he is reputed to be a very truthful person?
A. As far as I know.
Q. Would you consider a man who had lied under oath truthful, no matter what the reason was?

Mr. Wegman: If your Honor please, I object to the question.

The Court: Objection overruled.
Mr. Wegman: Exception.

Q. Would you?
A. Of course not.
Q. And if you knew that this defendant had lied under oath on at least three or four occasions, would that change your testimony about his reputation for truthfulness?
A. It all depends——

Mr. Wegman: I object to that.
The Court: Overruled, and you have an exception.

A. It all depends on the source from which the information came.
Q. If it is indisputably shown that this defendant had lied under oath, would you still say that his reputation was good for truthfulness?
A. I would not.
Q. You are not this man's personal friend, are you, the defendant Berger's?
[fol. 312] A. No, but I was out with him socially.
Q. You just answer my question, say yes or no, and it will be a lot easier for both of us. You did not go to this apartment with him over at West 57th Street, did you, during the months of December last year and January of this year?
A. I did not.
Q. You have never associated with this defendant when he was with a man named Katz, have you?
A. No.
Q. You were never with this defendant when he was up in an apartment on 57th Street with a girl named Seigal?
A. No.
Q. You were never with this defendant when he was at the Parisian Dance Hall in New York?
A. No.
Q. Doing some business, or talking to some woman by the name of Goldie Goldstein, were you?
A. No.
Q. You were never with this defendant when he was with Jones?
A. No.
Q. And these other people at this apartment at 57th Street?

A. I was not.

Q. As a matter of fact, your knowledge of this defendant was confined to his activities away from this place at 57th Street, was it not?

A. That is right.

Mr. Singer: That is all.

Redirect examination.

By Mr. Wegman:

Q. Mr. Glatzer, you answered the innuendo of the Assistant United States Attorney in connection with what your [fol. 313] opinion would be if you were told that the defendant had lied under oath——

Mr. Singer: If your Honor please, I never had any innuendo whatever; whatever I said I said directly, and I object to the form of the question on the ground that it assumes a state of facts not in evidence.

The Court: You asked him if he had heard those things would it have changed his opinion; that is what you asked. The question asked as to the lying under oath is not evidence of the fact that the man ever did, it is a question directed to this witness whether, if he had heard such a thing, would it change his opinion. It is not proof of the fact.

Q. Now, Mr. Glatzer, in the course of your dealings with Harry Berger over the past eight or nine years, you formed your own opinion of him, did you not?

A. I did.

Mr. Singer: I object to this witness' opinion. That has nothing to do with character evidence.

Mr. Wegman: If your Honor please, the United States ——

The Court: He is testifying to the man's reputation in the community.

Mr. Wegman: I am taking him over the ground that the [fol. 314] District Attorney examined him on.

The Court: Let us get right down to it, because the District Attorney asked him specific questions as to his impressions.

Mr. Wegman: That is right, I am dealing with those impressions.

The Court: Go ahead; confine yourself to the questions that were asked.

Q. If you had known that the defendant, Harry Berger, had been convicted of a crime ten years ago, and you had had your course of dealings with him over the past eight or nine years, as you said, would you consider that fact, that he had been convicted so many years ago, was still something against his character?

A. I would not.

Q. Would you consider that a conviction for robbery in the third degree of a man when he was twenty years old was anything against, was something that he could not live down later?

Mr. Singer: I object to that.

The Court: I will let him answer that. That is just exactly what we want to know.

A. I would judge the man by my own dealings with him.

Q. In connection with your answers to the Assistant United States Attorney's questions about truthfulness, if [fol. 315] the so-called lies about which the Assistant United States Attorney spoke were nothing more than a concealment of the past conviction for robbery, would you still say that that was something that would cause you to be doubtful about the man's general character in other lines?

A. I would not say——

Mr. Singer: Of course, if your Honor please, the only thing that counsel can inquire about—all right, if he wants to ask the question.

The Court: Answer the question.

A. I would say that a man's concealment of a previous conviction was a very natural thing, and I would not hold it against him if he tried to conceal that.

Mr. Wegman: That is all.

Recross-examination.

By Mr. Singer:

Q. You would not hold it against him if he swore falsely two or three times that he had not been convicted, we are

not talking about concealment from a man's friends or casual acquaintances, we are speaking about a concealment under oath in an application for a pistol permit. Is that what you intend to testify to now, that you think that is natural and that it is perfectly all right to lie under oath?

A. That is probably the result of ignorance.

Q. My dear friend, you and I are not at least—are you [fol. 316] attempting to excuse it because of his ignorance?

A. You know that is not so.

Q. Didn't you just now attempt to excuse it, and you said it was the result of ignorance? If you are excusing it, is it your own ignorance that you are trying to excuse?

A. Of course not.

Q. What I would like to know is, did you tell the truth when you made that answer?

A. Of course I did.

Q. That is all right for a man to lie under oath?

A. I did not say it was all right.

Q. You say that that would not make any difference to you, it was perfectly all right?

A. It would not make any difference if a man concealed from me the fact that he had been convicted.

Q. Counsel never asked you that. You are a lawyer, you know——

Mr. Wegman: The record will show what I ask.

Q. I asked you whether you thought it was all right, that it wouldn't change your opinion if a man lied under oath about his conviction? He couldn't lie under oath and still be truthful, could he? You didn't mean that by your answer, did you?

Mr. Wegman: If your Honor please, I object to this.

[fol. 317] A. I would rather rely on my original answer.

The Court: Ask a new question. Do not argue with this witness.

Q. Did you state to counsel that you thought it was all right, excusable, all right and excusable, or all right or excusable, for a man to lie under oath in an attempt to conceal a prior conviction; did you say that?

A. It all depends on the circumstances.

Q. You say there are circumstances when you would excuse a man for lying under oath about his prior conviction?

A. Yes, I think there are such circumstances.

Q. Would you say that such a circumstance was excusable when he took the witness stand in a court and swore falsely?

A. No, I would not.

Q. Would you say it is excusable when he made an application to carry a gun?

A. That would all depend on the man's ignorance or his knowledge of the effect or the importance of an application for a pistol permit.

Q. Well, explain it to me. I would rather have you tell me the whole story so that I can get your mind.

A. Will you tell me what I have to explain, and I would be glad to?

Q. You mean to tell me that under certain circumstances it would be all right for a man to apply for a pistol permit and not to state that he had a conviction?

A. I wouldn't say that it would be all right, and that isn't what I did say. I said in my mind such an offense would be [fol. 318] excusable, taking into consideration what the man's knowledge was, the extent to which the man thought he was violating the law. If he did not think he was violating the law, to my mind it would be excusable, because it would be no intent to violate.

Q. But suppose the man knew that if he had been convicted of such an offense he could not get the permit, and the only way he could get it would be to hide the conviction?

A. On such an assumption it might not be excusable.

Mr. Singer: That is all.

Redirect examination.

By Mr. Wegman:

Q. Mr. Glatzer, if the man who had lied under oath to get a pistol permit had the matter presented to the Grand Jury——

Mr. Singer: I object to anything like this.

Q. (Continuing:) —and the Grand Jury——

Mr. Singer: Just a moment, I object to it.

The Court: He is not passing on what the Grand Jury did; he was asked whether, if a man had done a certain

thing, he would change his opinion. It isn't a question of what the Grand Jury did, it is a question of what the man did.

[fol. 319] Mr. Singer: And counsel cannot get into this record anything that happened anywhere else.

Mr. Wegman: I am following the questions by the United States Attorney.

The Court: The Assistant United States Attorney has offered no proof that he lied under oath, therefore that proof cannot be met.

Mr. Wegman: I am asking a hypothetical question.

The Court: I understand, but you are limited. There has been no proof that he lied under oath. The question asked this man was that if he did lie under oath, would it affect his opinion. It isn't a question of whether he was guilty or not guilty, it isn't a question of whether he admitted it or not, that isn't the thing; that wasn't asked. It was simply asked the man what the effect would be on him if he did. There is no proof that the man lied under oath. The question was asked this man whether that would have an effect, and until there is some proof offered of the fact, you are certainly not in a position to rebut the proof with this witness, because the fact isn't here.

Q. If you knew, Mr. Glatzer, that the man had lied under oath, and if you also knew that the Grand Jury had refused——

[fol. 320] Mr. Singer: Just a moment. I object.

The Court: I have already told you that that is not admissible, and I will grant you an exception if you want it. Do not ask the question again.

Mr. Wegman: I respectfully except.

The Court: You have already had your exception, and you should not have asked the question a second time.

Mr. Wegman: Exception.

The Court: I do not want to be unduly strict, but there is, of course, a limit to the number of character witnesses. I do not want to be unduly strict, but there is certainly a limit in this particular case. I am not going to fix the number of such witnesses that you can call, but there is a limit.

Mr. Wegman: I understand that.

(Witness excused.)

JULIUS GERBER, called as a witness on behalf of the defendant Berger, having been duly sworn, testified as follows:

Direct examination.

By Mr. Wegman:

Mr. Wegman: If your Honor wants me to stop calling character witnesses now, please tell me.

The Court: No, I want you to conduct the case within reason. There certainly is a limit to that, and within rea- [fol. 321] sonable limits you may call these witnesses. I just want to tell you that, because certainly we are not going to have several hundred called.

Mr. Wegman: The point at issue in this case is the man's character.

The Court: The point at issue in that matter is that you may call a reasonable number of witnesses, what you may think and what we all may think are a reasonable number of witnesses, to testify to this man's character. But there is certainly a limit. The point at issue here is not the defendant's character, it is whether he had dealings in counterfeit money.

Go ahead with your witness.

By Mr. Wegman:

Q. Mr. Gerber, what is your occupation?

A. Public accountant.

Q. Are you acquainted with the defendant, Harry Berger?

A. I am.

Q. How long have you known him, Mr. Gerber?

A. Since 1927.

Q. Have you had business dealings with him?

A. I have.

Q. Have you been in contact with people in the community in which he does business who have had business dealings with him?

A. I have.

[fol. 322] Q. Are you acquainted with people that reside in the community in which he resides and who know him as a resident of that community?

A. I do not know anyone in that community.

Q. What?

A. I do not know anyone living in that community.

Q. Do you know people who had business dealings with him?

A. I know people who have had business dealings with him, yes.

Q. Do you know his reputation among people with whom he is dealing?

A. Yes, I do.

Q. Do you know what his reputation for honesty is?

A. He is considered honest.

Q. Do you know his reputation for trustworthiness?

A. He is considered trustworthy.

Q. Do you know what his general reputation as to character is?

A. In my opinion it is good.

Q. Have you ever heard anything from anybody who ever had any dealings with Harry Berger that in any way whatsoever reflected upon his character?

A. I have not.

Q. Have you ever heard anything at all from anyone who ever did business with him or had business dealings with him that was in any way a criticism of his character?

A. I have not.

Mr. Wegman: You may examine him.

[fol. 323] Cross-examination.

By Mr. Singer:

Q. You do not know anything about counterfeit money, do you?

A. No.

Q. You do not know whether this defendant passed counterfeit money or not, you weren't there, were you?

A. No, sir.

Q. You do not know whether he had any in his possession?

A. No.

Q. You do not know his friends and his associates, Jones and Katz, and these ladies up in this 57th Street apartment?

A. No, sir.

Mr. Wegman: If your Honor please——

Mr. Singer: That is all.

The Court: What is the objection?

Mr. Wegman: The question has been answered, but I do want at this time——

The Court: What is your objection? State it.

Mr. Wegman: I do at this time ask your Honor to instruct the Assistant United States Attorney not to put his questions in such form as to indicate to this jury a state of facts which is definitely not so.

The Court: What is the objection, please?

Mr. Wegman: The Assistant United States Attorney in his question——

The Court: State your objection.

Mr. Wegman: That this defendant passed counterfeit money——

The Court: You haven't offered any objection. You [fol. 324] are asking me to do something, but you have not stated your objection.

Mr. Wegman: My objection is to the Assistant United States Attorney assuming in his question a state of facts which has not been proven in any way whatsoever.

The Court: Objection is overruled; the question has already been answered.

Mr. Wegman: Exception.

Harry Berger, one of the defendants, called as a witness in his own behalf, having been duly sworn, testified as follows:

Direct examination.

By Mr. Wegman:

Q. Mr. Berger, how old are you?

A. Thirty years.

Q. And you are engaged in the real estate business?

A. That is correct.

Q. Where is your office?

A. My office is 7918 Woodside Avenue, Jackson Heights.

Q. How long have you been doing business in that community?

A. Since 1926.

Q. About ten years ago you had an experience with the law, did you not?

A. I did.

Q. You were in some trouble?

A. I did.

[fol. 325] Q. Please tell his Honor and this jury about that.

A. In December of 1924, I was arrested in Brooklyn by a policeman who was chasing a man who had shot at some person in Brooklyn. When I heard the shooting I ran around the corner. I was arrested that evening, and when I was brought down there was absolutely nobody there to identify me. But after being for eight months in Raymond Street Jail, in one solitary confinement, I was brought up by the District Attorney at least fifteen times for trial, and to plead guilty, which I refused. I then, at the advice of my counsel and the District Attorney, took a plea before Judge Martin, on the recommendation that I would receive one year in jail and be credited with the eight months that I was in Raymond Street Jail. After suffering for eight months in this way, it seemed that that was the easiest way out. I accepted a plea, and I was sentenced to Sing Sing. I believe it was in August or September, I do not recall. I stayed in Sing Sing for four months, and upon the recommendation of the Senator, I believe his name was Long who was the head of the Parole Board, he recommended my parole. That was in December of 1925.

Q. There was never any trial on this charge against you at that time, was there?

A. Absolutely not.

The Court: What did you plead guilty to?

The Witness: Robbery in the third degree.

[fol. 326] Q. At that time you were about 20 years old, weren't you?

A. That is right.

Q. Had you ever been in any trouble before that?

A. Absolutely not.

Q. And until the time that the difficulties arose by reason of your acquaintanceship with Jack Katz, that is to say, until the middle part of January of this year, had you ever had any trouble of any kind with the authorities or with anyone else?

A. I have not.

Q. When did you first meet Jack Katz?

A. The fir... time I ever met Jack Katz was, I believe, not to be exact to the date, but it was around the middle of December.

Q. Had you ever seen him before that?

A. Never did.

Q. Had you ever heard of him?

A. I had not.

Q. Had you ever——

The Court: That is 1933, was it?

The Witness: 1933.

The Court: You said the middle of December; of last year?

The Witness: Last month, last year.

The Court: Of 1933?

The Witness: That is right.

Q. During all those years intervening you had been engaged in business, in the real estate business, had you not?

A. That is right.

[fol. 327] Q. Incidentally, did you ever have a mustache?

A. Never did.

Q. You were acquainted with the defendant Jones, were you not?

A. I have known him for practically three or three and a half years.

Q. Will you tell his Honor and the jury how you came to be acquainted with Jones?

A. I built the building at the northwest corner of 46th Street and Queens Boulevard. It is a corner building with eight stores. In the corner I leased the store to a stationery, cigar and soda fountain and luncheonette. My office was in that building which was right adjoining to the cigar store and luncheonette. Mr. Jones was then in charge of that luncheonette and soda fountain, and I had my lunch at that soda fountain quite regularly.

Q. During the course of time as you were engaged in the real estate business did you manage properties?

A. I have; I have built my own and managed property.

Q. You have never had any difficulty of any kind with any of that property, that is, with any management of any property or with any of the people with whom you did business?

A. Just what do you mean by that?

Q. I mean, you never had any dispute as to money or anything like that?

A. Never; absolutely never.

Q. In connection with the management of this property, you collected rents, did you not?

A. That is right.

[fol. 328] Q. Please tell his Honor and this jury about how much a month you collected in rents?

A. Well, up until the middle of 1932, I had no management, but I done a general brokerage business. But in 1932 I was appointed the managing agent for 186 apartments opposite my office, for which I drew the leases and collected the rents until such time that the building was completed. For my satisfactory results of that management, plus the management of the building at the northeast corner of Queens Boulevard and 47th Street, that contained, I think it was, eleven or twelve stores, and for which I collected approximately $900 a month—I also managed the building which I lost in 1930, I believe it was, that I built at 46th Street for Gross & Lemmerman, for which I collected approximately eight or nine hundred dollars a month. And I have managed that property from that time on. And I also manage the building at the southwest corner of 49th Street and Skillman Avenue, containing two stores and two apartments.

Q. For the buildings that you managed, the stores and the buildings on which you collected rent, what amount of rent did you collect a month, that is, how much money did you receive from the various tenants of properties owned by you or managed by you?

A. Well, there was one month that I managed those two buildings, that is, for two months, and during those two months I collected over $15,000 in cash. But my monthly [fol. 329] collections were approximately five thousand, four thousand or six thousand; the exact amount I do not know.

Q. You never had any difficulty with anyone at all about accounting for that money, did you?

A. Absolutely never.

Q. In the past several years you haven't been in any particular need of money, have you?

A. I should say not.

Q. You have an automobile?

A. A twenty-five hundred dollar car.

Mr. Singer: That is a new defense. You do not need money.

The Court: He can show the whole situation.

Mr. Singer: That is a new defense.

The Court: He can show it.

Mr. Wegman: Even Mr. Singer can learn something.

Mr. Singer: Not from you, my friend.

The Court: He can show the whole situation; he can show the circumstances.

Q. You associate with some prominent people, do you not?

A. Absolutely.

Q. People who are well off financially?

A. Very well off.

Q. You have enjoyed their friendship?

A. I have.

Q. And you value that, don't you?

A. I surely do.

Q. You are not married, are you?

A. I am not.

[fol. 330] Q. Occasionally, in the course of time, in the last year or so, you went over to New York, did you not?

A. I did.

Q. You were acquainted with the young lady?

A. Which one do you mean?

Q. Who is a defendant in this case?

A. There has been several of them here.

Q. Well, now, do you know Audrey Seigal?

A. Very well.

Q. What is her occupation?

A. She is a registered nurse, graduate of Mt. Sinai Hospital.

Q. You used to visit at her apartment quite frequently, did you not?

A. I did.

Q. She had never been in any difficulty with the law, so far as you know?

A. Absolutely never.

Q. So far as you know, she was a nice girl?

A. That is correct—well, just what do you mean?

Q. Well, you had never heard anything against her character for honesty and trustworthiness?

A. Absolutely not; she was absolutely trustworthy, that is, as far as money is concerned, I do not know——

Q. It is a fact, is it not, that you first met Jack Katz in the apartment of Audrey Seigal?

A. I came to the apartment when they opened up the apartment, that is, when they moved in. It was around a few days before the 15th of the month, but she had a house-warming on the 15th of the month, which I was invited to, and when I entered I met Mr. and Mrs. Katz as man and wife.

[fol. 331] Q. That is Jack Katz, who testified here yesterday, and his wife, who was dismissed after the close of the Government's case?

A. That is right.

Q. They were there together and you were introduced to them?

A. That is correct.

Q. Had you ever seen either of them before that?

A. Never.

Q. Did you see them with any frequency afterwards?

A. I have seen Mr. and Mrs. Katz about four or five times after that, at Miss Audrey Seigal's home.

Q. That is this apartment on West 57th Street?

A. That is correct.

Q. Did you ever have any business dealings of any kind with Jack Katz?

A. I should say I never did.

Q. Did you at that time know that he was an ex-convict?

A. At the time I met him I did not know he was an ex-convict.

Q. Did you know at that time that he had any kind of criminal record, at that time?

A. When you say "at that time," I want to get my mind clear.

Q. I mean up to the end of December, 1933, at any time up to the end of 1933.

A. Well, I think it was a couple of days before December, before January, that I found out that he had, that he was on parole, and that was the time that I told Miss Audrey Seigel that either he leave the apartment or I would never come back in there again.

[fol. 332] Q. Will you tell his Honor and this jury how it happened at that time that Jack Katz was staying in that

apartment? You say you told her he had to leave the apartment or you would never come up there again. Will you tell his Honor and this jury how it came about that he was there?

A. You mean how I found out that he was on parole?

Q. No, how it came about that he was staying in the apartment of Miss Seigal?

A. Well, it was, I believe, the first day after Christmas, I brought a radio to Miss Talle's apartment——

Q. What is the name?

A. Miss Seigal's apartment, and I gave her a Christmas present of $50. And I was seated in the apartment and Mr. Katz came up. He asked Miss Seigal and myself and the other two girls in the apartment if they had seen his wife, and they said they had not. He went over to the telephone, and he called up his sister-in-law's home and asked if Mrs. Katz had stayed there that night, and they said, "If she did, that is none of your business," and they hung up on him.

About twenty minutes later Mrs. Katz called up and they arranged to meet at the apartment at 57th Street. When they came up there they had a sort of argument, why she stayed out all night. She said, "Jack, if you wouldn't beat me, I wouldn't stay out all night." Right there and then they parted, and they made an appointment to meet over at the hotel where he was living, at the Wellington Hotel.

[fol. 333] I stayed there that night until about 7:30 or 8:00 o'clock, when Mr. Katz came back, and he said that his wife was coming over and he brought up a pint bottle of liquor. When his wife came in, she was there about ten or fifteen minutes before they got into another argument, and Jack started in to beat up his wife. When Jack started beating up his wife, she started in to yell, and ran out of the house without her coat and without her hat. About a half an hour later Mrs. Katz' sister came up to the apartment with her brother and another gentleman, who I later found out was Mrs. Katz' sister's husband. They came up there looking for Jack Katz. Jack Katz by that time had already left. It was around 8:30 or maybe 9:00. Then a telephone call came in, and this man described himself as Max, and he asked, "Where is Jack Katz?" And I said, "Well, I don't know; he left here after he had a fight with his wife." They said, "Who is this?" I said, "This is

Harry Berger." He said, "Well, I want to talk to you." So I said, "Come right up." So he came up with the other man, and neither of the men did I know; and he says, "Tell me what actually happened here." So I said, "Well the man and his wife, they got into a fight," and I said, "She ran out on him." And he said, "Where is Jack?" I said, "I do not know." He put on his hat and coat and left." He said to me, "Why didn't you protect Mrs. Katz from getting beat up by her husband?" I said, "When it comes between man and wife, I will not inter-
[fol. 334] fere." And they said, "You are right about that," and they left.

About eleven o'clock that night Jack Katz called on the telephone and asked did anybody come around after the fight, and I told him there came two men looking for him, and I asked who they were, and one man said his name was Max. He said, "Oh, I know who it is." I said, "Well, I am sorry, Jack, but I would advise you never to come back to this apartment again. You have caused a disturbance and the girls are all upset, and it would be the best thing for you not to come back here any more." He said, "Jesus, I haven't got any money with me. Why not let me come up and sleep over the night and tomorrow I will have some money and I will check out." So I asked the girls, and at first they rejected to having a man sleep up in the apartment, and later they consented.

I think it was two or three days later, no, it was the following day, Audrey Seigal called me up at the office and said, "Harry, I want to see you tonight." I said, "What happened?" She said, "Well, it is a personal matter." I said to her, "What is it?" She said, "I can't tell you on the telephone." So that night I went over there, and Miss Seigal says to me, "Is this true, that you have a year parole?" I said, "What makes you ask that?" She said, "Well, Ray Katz went down to the parole officer, Mr. Doyle, and told him that Jack Katz beat her up and she wanted him sent back for violating *for* parole." And he says, "Well, at whose place was it?" And Mrs. Katz said, "At
[fol. 335] Audrey Seigal's place, and her boy friend, Harry Berger, was there." Mrs. Katz said to Mrs. Seigel that the parole officer said, "Harry Berger from Long Island. Why, he is still out on parole."

Well, that got me all upset, and the following day I went down to Mr. Doyle at the State Building, I believe it is,

down on Center Street or Worth Street, and I got in touch with the parole officer who paroled me at the time that I was discharged, and I explained to him the circumstances. He took me in to see a man by the name of Mr. Doyle. This man, Mr. Doyle, I believe was the parole officer of Mr. Jack Katz, according to what he said. And Mr. Doyle said to me—I explained to Mr. Doyle, by the way, what actually took place. I said, "I think it is a shame if a man wants to lead a clean life and be respected among people in his community, and wants to make an honest living, that a parole officer should expose the fact that a man had been out on parole." He said to me, "That is an absolute lie. We haven't even got a record of your being on parole in this building," and he says, "To prove that no such thing ever happened we will call Mrs. Katz up in your presence," which he did. Mrs. Katz wasn't home that evening, that afternoon, rather, and she promised to call back this Mr. Doyle when she would come back home.

Mr. Doyle called me up in the evening and told me there was an appointment for Monday morning at his office with [fol. 336] Mrs. Katz. Mrs. Katz came in that morning, and Mr. Doyle asked me to step into another room which was right adjoining to the room where he was going to question Mrs. Katz, and I did.

Mrs. Katz came in. She sat down and she denied everything that Miss Audrey Seigal had told me, and stated to Mr. Doyle that she never did mention to Audrey Seigal that I was out on parole, but that Audrey Seigal told her that I was on parole.

Well, when I got back I called her up. I said, "Well, now listen, I never want to see you again unless you will have Jack Katz stay out of that apartment."

Q. Was that the first time that you had any idea at all that Jack Katz was an ex-convict?

A. By the way, Mr. Doyle told me at that time that Jack Katz was out on parole, so I told Miss Seigal, "If you are going to have him stay there, I will never come up to that apartment again." And she said, "I will see to it that he checks out," which he did that same day. He notified Mr. Doyle that he was moving to an address on 89th Street, which the Parole Board had immediately checked up and found out that it was true. I then went back and told her that I was satisfied as long as I would never see him again.

Q. Did you ever have any dealings of any kind in a business way with Jack Katz?

A. Absolutely never.

[fol. 337] Q. Did you ever have any idea or any intimation whatsoever that Jack Katz was handling counterfeit money?

A. At no time did I know it.

Q. Was there anything said by anybody that could have given you any impression or any intimation that Jack Katz was handling counterfeit money?

A. No, I never knew anything at the time I met him. I accepted him as a man and wife.

Q. There was another time after that that you met him without his wife, that was right after his wife left him, I mean several weeks later?

A. Oh, yes; I met him in the apartment with another man who had come with Jack to the house——

Q. We will come to that a little later. Will you tell his Honor and this jury the occasion of your visit to the Parisian Dance Hall with Eddie Jones?

A. Yes.

Q. Tell us what brought you to the dance hall.

A. It was the early part of December, I believe it was the first week in December. Mr. Jones called on me at my Jackson Heights office and asked that he would like to see me, that he has some business to take up with me. I told him I couldn't see him that afternoon, but I would see him after dinner, meaning I would go home for a bite and then come down to see him, which I did. And Mr. Jones told me that a proposition was offered to him of a soda fountain and luncheonette in this Parisian Dance Hall. I went down with Mr. Jones to look at this Parisian Dance Hall with [fol. 338] him. I went down there and I looked the place over, and I said to Mr. Jones, "In a dance hall what good is a soda fountain?" I said, "The type of people that come into a place like this would be for a bar." He thought that was a good idea. I then stated to him, as long as this woman was notified to vacate this concession, there is no use of him paying her $1,500 for something that she couldn't use.

Q. Just a minute. This woman was this Miss or Mrs. Goldstein who testified on the first day of this trial?

A. That is right.

Q. Go ahead.

A. We then went over to the manager of the Parisian Dance Hall and asked him where the owner of that place was. He told me he would get him on the 'phone, which he did. Around 11:30 or 11 o'clock that night a gentleman came down representing himself to be the owner of that dance hall, and agreed with the suggestion that I made to Mr. Jones about our purchasing her place for $1,500, but to lease the place direct from the owner of this dance hall. And we started negotiations with this man who represented himself to be the owner of this dance hall. He wanted $300 a month and wanted $300 security——

Q. There is no need going all over that, although it is interesting, but let us get along a little more quickly. After that occasion how many times were you back to the Parisian [fol. 339] Dance Hall with Eddie Jones?

A. About a week later, when the owner of that dance hall called up Mr. Jones and told him to come down, he wanted to see him, inasmuch as we were expecting a proposition back from him; Mr. Jones did not want to put up security.

Q. You went back there at that time, is that right?

A. That is correct.

Q. Were you ever there again?

A. Never.

Q. About what time was this last time that you were there? Was it before New Year's or after New Year's?

A. Oh, God, it was before Christmas.

Q. And you were never there after that?

A. Never back there again.

Q. And until the day, the first day of this trial, had you ever seen Goldie Goldstein from that day?

A. Never; I did in court here, when I arrived, when I was brought into this court here she was sitting back there.

Q. Outside of those occasions you had never seen her or spoken to her?

A. Absolutely never.

Q. Had you ever spoken to her at all outside of these two occasions you have mentioned?

A. Never.

Q. Mr. Berger, let us carry down to the night of January 13th. Will you tell his Honor and the jury what happened on that night?

A. On the morning, that is, around one o'clock on January 13th, which was on a Saturday, I got a call from a

young lady by the name of Miss Wishnu, who Mr. Singer knows very well——

[fol. 340] Mr. Singer: What is that?

Mr. Wegman: Never mind; I consent that it be stricken out.

Mr. Singer: Never mind about striking that out. Let him go on and tell how I know her; let us hear about it.

The Witness: Miss Wishnu told me——

The Court: Let us have it all; tell us everything.

The Witness: Miss Wishnu told me, who is one of the girl friends of Miss Seigal and Miss Molnar, who lived in the same apartment, that Miss Audrey Seigal was expecting company that night, and that if I wanted to be surprised I should walk in on them. I said, "I am awfully sorry, but tonight I am invited to a wedding anniversary at the Club Plaza of my brother-in-law." That night, around 2:30 or 3 o'clock, when the party broke up of approximately thirty or forty people, on my way home I stopped in on 57th Street, which was the Park Vendome Apartments, and I rang the bell several times and I heard noise in the apartment. Finally, after around fifteen minutes——

Q. Did you say anything when you rang the bell?

A. I said, "Audrey, this is Harry. Why don't you open up the door?" I said that several times. Finally the door was opened and a young man says, "Come on in." I [fol. 341] walked in, and as I walked past the foyer he pulled out a gun and he says to me, "So you are Harry Berger?" I said, "Yes." He said, "Well, have you got a gun on you?" I said, "A gun? Why, no, what makes you ask me that?" He said, "You have got a permit for a gun, haven't you?" I said, "Yes, I have had it for three years." And he said, "Well, throw up your hands." I threw up my hands and he searched me. After he searched me he showed me his card representing——

Q. Did he find a gun on you when he searched you?

A. I never carried a gun. After that he showed me that he was an employee of either the Federal Department or the United States Attorney's office, and he was there only in pants, no shoes, no upper shirt. And Jack Katz was up there identically the same. The davenport was down, room for at least four to sleep, but only Mr. Katz was there and this man who represented himself to be somebody of the

law. And the davenport was pulled out from the wall. Miss Seigal was there and Miss Joyce Molnar was there, and all they had on there was their kimonos, sitting up in bed. Both beds were made, champagne and ale bottles were around, liquor was all over the place. So I said to Miss Audrey Seigal, I said, "This looks very cute, doesn't it?" And she says, "Well, you are going out for a good time with Jack Katz' wife, why shouldn't I?" I said, "Am I going out with Jack Katz' wife?" And she says, "Why, [fol. 342] surely, you know you are going out with Jack Katz' wife." I said, "Well, that is very cute, that is a very cute thing to accuse me of." So this man with the gun says, "Have a seat." I had a seat, and he got dressed. When he got dressed, he said, "Come on downstairs with me." We went downstairs and he says to me, "Listen, Berger, you don't know me and I don't know you, but if you want to be a regular fellow, anything that you seen upstairs tonight, forget about, because I am working on a very important case." I said, "What is the idea of using the language you did to me? I haven't done anything." He says to me, "Well, let us forget all about that;" that was a coincidence, what happened at the 57th Street apartment.

The Court: What has that to do with Mr. Singer?

The Witness: Well, Mr. Singer, Miss Wishnu admitted to Mr. Singer that she purchased counterfeit hundred dollar bills, and admitted to Mr. Godby and I think Mr. Singer said, "It is O.K., Baby, let us go to first base."

Mr. Singer: Is that all? I thought I was in that apartment with the gun.

Mr. Wegman: There has been no suggestion of that altogether, and you know it.

Mr. Singer: There might have been.

Q. I asked you to tell his Honor and the jury what you knew of what happened on January 13th, and I didn't ask you to indulge in any personal references. Please control [fol. 343] yourself. I can understand that you are under a strain, but at the same time try to control yourself.

Q. Had you ever been out with Mrs. Katz?

A. Never in my life.

Q. Was Jack Katz present at the time this remark was made by Audrey Seigal?

A. There were the four of them in the room, everybody undressed.

Q. Now, then, immediately after that your troubles began, did they not?

A. Two days later I got a call from a man who represented himself to be Police Captain McDermott at Police Headquarters, and he said to me, "Mr. Berger, is this true, that you are an ex-convict?" I said, "What makes you ask me that?" He said, "Well, there is a complaint made here that you have a pistol and you have a permit, and that you are an ex-convict. Now, if that is so, I want you down at headquarters, and I want you to bring your pistol and your permit with you." I then called up counsel.

Q. Who did you call up?

A. I called up Mr. Abraham Kesselman, who represented me in 1924.

At the time you pleaded guilty?

A. That is correct, and asked him what I should do, and he said, "Why, you haven't done anything with that gun, have you?" I said, "Why, no, I never carried it." And he said, "Call back Captain McDermott and tell him if he has got anything on you to come and get you." I did. I called Captain McDermott back and told it to him. He said, "If [fol. 344] that is the way you feel about it, O. K."

The following day I got a call from a patrolman, Farrell, who was the clerical clerk at the 110th Precinct in Elmhurst. He called me up and said, "Mr. Berger?" I said, "Yes." He said, "There is some trouble here about your pistol permit. Will you please come over with your gun and your permit?"

I called back Mr. Kesselman, and he sent an attorney down there, and with the attorney I went to the 110th Precinct, at which time I was arrested for not entering in my pistol permit that I have been convicted of a crime in 1924 or 1925. I waived examination before Judge Huxtra in the Magistrate's Court for the Grand Jury. The Grand Jury dismissed, dismissed any indictment, and they found no indictment against me, and the case was dismissed.

Q. And you were discharged?

A. I was absolutely completely discharged.

Q. Did you subsequently learn who it was that had made the complaint to Captain McDermott about the fact that you had this pistol permit?

A. I have.

Q. Will you tell his Honor and this jury about that?

A. While I was on Lexington Avenue ——

Mr. Singer: I do not know what that has got to do with the case.

The Court: I do not know either, unless it has to do with the witness Katz; he is trying to show bias.

Mr. Wegman: That is precisely what it has to do [fol. 345] with.

The Court: Go ahead.

A. (Continuing) I got a call from a man by the name of Mr. Price. I went right up, I was admitted to bail on this perjury charge on this pistol permit. I went down to see Mr. Kesselman. I explained the case to Mr. Kesselman, and while I was there I called the office and asked if there was any messages for me, and the young lady said that—the young lady in the office said that a man by the name of Mr. Price called up at Murray Hill 2-1234, at the Daily News Building, that unless I communicated with him immediately, that the newspapers would be full about me, because I do not want my name spread among Queens, because too many people know me. I called back, and the young lady said that Mr. Price was busy on the telephone. I said I would hold the wire, which I did, and then I was disconnected. I says to the young lady, "Well, who is this Mr. Price?" And she said, "I do not know."

Well, when I left Mr. Kesselman's office I went down to the Daily News Building. When I got to the Daily News Building, I went up to where the editorial department was, and I made this complaint, "Why should my name be spread in the newspapers when I am not found guilty of anything I did?" And I told this man who represented himself to be the complaint clerk at the Daily News Building what actually happened. He says to me, "We have no man here by the name of Mr. Price, but I will check up and [fol. 346] find out who made that call," and he asked me for my name, address and telephone number, and said he would call me back and let me know. At 4:30 that very same man called up at the office and said that Mr. Jack Katz, who represented himself to be Mr. Price, was working with an editor for the Daily News by the name of Collins on something for a Daily News story about a certain man who was stealing the affections of his blond wife, and while he was there and telling Mr. Collins about this story,

he told him, "Why don't you give Harry Berger plenty of publicity," that I am an ex-convict and I was just arrested for having a pistol and having a permit. And he told me it was a green operator that was on the switchboard at this time, and that if this green operator was not there, that call would never have been made.

I then spoke to Mr. Cassidy, who told me that a Mr. Jack Katz—Mr. Cassidy, by the way, is also an editor or reporter for the Daily News—he told me that Mr. Katz has annoyed him to death to give me publicity in the paper, and that while he was at a dinner with Katz and McDermott in a certain hotel, Jack Katz came down to Captain McDermott and told him, "Unless you arrest Harry Berger, I will go down to see the District Attorney." And it was the following day that Captain McDermott ordered me to come in with my pistol permit.

Q. This was all within a day or two or three after the [fol. 347] morning of January 14th, when you went to this apartment at three o'clock in the morning?

A. That is correct.

Q. After that date and until the time when you were called by Mr. Godby and asked to come down to the Custom House in New York had you ever seen Jack Katz?

A. I should say I never did.

Q. You never had anything to do with him?

A. Never had anything to do with him.

Q. Coming along until about February 5th or 6th, you received a telephone call from Mr. Godby, did you not?

A. I received a telephone call the night that I was arrested, the date I do not know. Mr. Godby called my Jackson Heights office—oh, I believe it was the young lady, Miss Seigal, called the Jackson Heights office and said she was at the Custom House with Mr. Godby, a Federal Secret Service man, and that he wanted to talk to me. My brother conveyed the message to me, at which time I called up and spoke to Mr. Godby and asked Mr. Godby what he wanted to see me for. He said, "Oh, nothing at all, I just want to ask something about Jack Katz with some counterfeit money." I said, "Well, I do not know anything about it." He said, "All I want to do is ask some questions," so I said, "All right, I will come down." Within fifteen minutes, at the very most, or twenty minutes, I came down there. When I came in I met Mr. Godby, I met Audrey

Seigal, Joyce Molnar, and Jack Katz. Mr. Godby said, "Do [fol. 348] you know these people?" I said, "Yes, I know each one of them." He says, "What do you know about counterfeit money?" I looked at him and I laughed. I said, "What are you doing? Are you kidding me now?" "No," he said, "this is a serious thing." And I said, "What I know about counterfeit money is I never seen any and I never handled any and I know nothing about it." And he said something, "Oh, you are that kind of a fellow, you do not want to talk; I had better lock you up." I said, "If you feel that way about it, all right, it is O.K. with me." I said, "I do not know anything about it and I cannot tell you anything about it," and he said, "I will hold you and hold Jack Katz, and I will send the two girls home," which he did, put me into a police station down near the river, and it was an ice-box where they had no steam, and I had to keep my overcoat on all night. The following morning ——

Q. The following morning you were brought over here?

A. I was brought over here—no, the following morning he brought me back to the Custom House, and at the same time I met the girls; and also Miss Frances Wishnu, and Mr. Godby said to Frances—another detective, by the way, brought Miss Frances Wishnu in, or another Secret Service man, I do not know who he was,—and Mr. Godby says to her, "What do you know about this counterfeit money?" And she says, "The only thing I know about it is that Jack [fol. 349] Katz sold me counterfeit money for $25."

Q. Did you ever have any further conversation with Jack Katz?

A. Never, absolutely, I did not at no time.

Q. Did you have any conversation with him in Mr. Godby's office?

A. Yes, I did.

Q. Will you tell his Honor and this jury about that?

A. While Mr. Godby was standing there, and there was another gentleman there by the name of Mr. Kett, that gentleman over there, and another gentleman, this gentleman right here, Jack Katz stated, "Harry, were you fooling around with my wife? I want you to tell me the truth." I said, "Why, Jack, do you think I would fool around with your wife?" He says, "Well, I have been told that you were fooling around with my wife, that is why I am out to get even with you." I said, "So is that why I am here?" He said, "Yes, it is, but I am going to deny the statement

that I made, I am not going to testify to this when I go to court."

Q. Did he say whether the statement he had made was true or not?

A. He didn't say that, but he said the statement he made he would not stick to when he went to court, because he was under the impression that I was fooling around with his wife.

The Court: The other gentleman that you identified is Mr. Fitzgerald?

The Witness: That gentleman there, that gentleman there in the front and Mr. Godby and the gentleman back there, [fol. 350] the fellow with the grayish hair, he was also connected with that department.

Mr. Wegman: You may examine.

Cross-examination.

By Mr. Singer:

Q. The man who didn't have his pants on and was running around the apartment, he wasn't there?

A. No, Mr. Singer. Mr. Godby told me about this, he told me, as long as you ask me about it, if you want it, I will tell you, he told me "If you give this man's name out, I will give you the works."

Q. Give me the works?

A. No, Mr. Godby told me that.

Q. You are going to give me the works?

A. Mr. Singer, you are a gentleman, I have got nothing against you. You are doing your duty.

Mr. Wegman: You are not going to give Mr. Singer the works. Apparently Mr. Singer misunderstands you. Who made that statement?

The Witness: Mr. Godby says that.

Q. Wait a minute. Are you going to give me the works?

A. Mr. Singer, you are absolutely a gentleman, in my opinion, you are doing your duty here.

Q. Thank you very much. But I am only asking you are you going to give me the works?

[fol. 351] A. I do not give anybody such things, I never said it.

Q. All right. Then do not make the statement.

Mr. Wegman: The witness said that Mr. Godby said that.

The Court: The jury heard what was said. It is not for you or me to interpret the testimony.

Q. I asked you whether the man who was running around this apartment on this surprise visit of yours with his pants on or off, or dressed up like a gymnast, whatever you call it, was he there in the Secret Service office on the morning that you were arrested?

A. I didn't see him.

Q. I wasn't in that apartment, was I?

A. No, Mr. Singer.

Q. I didn't pull the gun on you and stick you up against the wall?

A. No.

Q. I wasn't up in this apartment at any time, as far as you know, was I?

A. As far as I know, you weren't.

Q. You might have an idea that I may have been there?

A. No, I should say not.

Q. I just want to get that part of it straight. It wasn't Mr. Fitzgerald who was running around the apartment with his pants off, was it?

A. No, it wasn't.

[fol. 352] Q. It wasn't Mr. Godby, was it?

A. No, it was not.

Q. Was it Mr. Kett?

A. No, it wasn't.

Q. It wasn't this tall man with the gray, very gray hair, the man over in the Secret Service office?

A. No, it was not.

Q. And it was nobody that has appeared so far in this case?

A. No, no.

Q. So far as you are concerned, if I get you correctly, you are an innocent man and you were framed?

A. No question about it.

Q. That is right, Katz framed you because he thought you were fooling around with his wife?

A. That is absolutely correct.

Q. Not only were you framed this time, but you were framed back in 1924 by a cop who saw you running when he was shooting at someone?

A. He did not see me run.

Q. You said that, didn't you?

A. I ran around the corner when I heard the shooting and he grabbed me.

Q. Yes, and that cop framed you too, you had absolutely nothing to do with it?

A. That is right.

Q. And your lawyer, Mr. Kesselman at that time, I am taking your word for what happened, you say he advised you to plead guilty and you were innocent?

A. That is right.

Q. And now you called that same lawyer, Mr. Kesselman, to represent you when you were told by Katz and McDermott to bring down your pistol permit?

[fol. 353] A. I did not; I said I went down to see him.

Q. Let me——

A. I did not retain him.

Q. Let me get this straight, you called your lawyer, Mr. Kesselman, you called on him?

A. Yes.

Q. And he told you that if McDermott wants you he should come and get you?

A. That is correct.

Q. Then you called Mr. Kesselman and told him that the property clerk out at the 110th Precinct in Elmhurst had called you on the telephone and wanted to see you?

A. That is correct.

Q. And Mr. Kesselman sent a lawyer out with you?

A. That is right.

Q. That is right.

A. But I didn't retain him in that case.

Q. I didn't ask you that. You didn't pay Mr. Kesselman any money?

A. No, no.

Q. He didn't appear for you in the case?

A. No.

Q. But you called him on these two occasions?

A. Right off at the minute I thought of him.

Q. Now, did you make an application from 1924 until 1934 for a pardon?

A. I was pardoned, but I personally made no application.

Q. You were pardoned?

A. I was.

Q. By whom?

A. By the State, or by the Government, back in 1929 or 1930, I think it was 1929.

Q. Where is that certificate?

A. I do not know.

Q. Showing a pardon?

[fol. 354] A. You can verify that part of it.

Q. That is what I am asking you?

A. I haven't got it; I couldn't say where I have got it at this time.

Q. You mean you were pardoned or you were discharged from parole, which was it?

A. When you say pardoned, just what do you mean, and when you say discharged, just what do you mean?

Q. Did you get a certificate from the Governor of the State of New York or from the President of the United States restoring to you your civil rights, an engraved certificate, or were you discharged, as you claim, by the parole officer with instructions that you need not report any further?

A. Well, that I do not know. After I think the first or second year, I only reported for one or two years, then I got a letter from the State——

Q. Yes.

A. Which stated that I was discharged or pardoned, I do not recollect, Mr. Singer, but you can verify that. I am almost positive it was pardoned.

Q. You got a letter from the State, and you made no application for it?

A. I think—I personally made no application, but I think it was made by Mr. Kesselman, but I am not sure.

Q. So you used Kesselman again?

A. No, I never paid him another nickel from that time.

Q. I know you didn't pay him, but you used him, the man who pleaded you guilty when you were innocent?

A. Not exactly; I have never retained him in any capacity.

[fol. 355] Q. He was just making an application for you for the fun of it?

A. Not for the fun of it, but that was the arrangement when I was first sentenced by Judge Martin.

Q. The arrangement was when you were sentenced by Judge Martin——

A. That when a certain time would pass he would make an application to pardon my sentence, or pardon my parole, or whatever you would call it. I am not making a statement unless I am sure.

Q. When you told your story, when your lawyer was examining you, did you leave anything out that you want to tell us, anything at all?

A. Not that I remember, Mr. Singer.

Q. Is there anything else that you want to tell us that you feel we ought to know?

A. About what?

Q. About anything?

A. If you ask me something I will answer you.

Q. I want you to feel right now that you have had an opportunity to say anything that you have got in your mind now before I ask you any other question.

A. Yes. You want me to tell you something?

Q. Anything you want to tell me about this case I want to know.

A. Mr. Godby, sitting right over here, called me out the first day that he called me up, and said, "Listen, Berger, have you got a real estate license?" I said, "Yes." He said, "Well, you know I am giving you the works on that. I told my father to put a complaint in about that license, and I am having it revoked." I said, "What are you do-
[fol. 356] ing this for? Do you want to take my bread and butter away from me? Do you want to take my living away from me. You do not want me to go out and beg on the streets, do you?" He said, "You had better come clean." And subsequently I got a letter from Mr. Godby's father that they had a hearing for my brokerage license and my notary public license, which I have had since 1929, and by which I have made an honest and respectable living. And I surrendered it instead of being revoked.

Q. All right. Anything else?

A. That is all I can tell you at the present time unless you ask me something.

Q. Have you got any other complaint to make about the way you were treated or handled? Let us have it all.

A. At the present time that is all I can say.

Q. You have had an opportunity up to now to say everything you wanted to say?

A. That I can remember.

Q. But there is one thing you never told us about?

A. Let us hear it.

Q. You never told us about the time Jones and you came up to the girls' apartment?

A. Mr. Singer, that is absolutely untrue and you know it is untrue. Who told you that, that Jones and I were up there?

Q. He never was near to that apartment?

A. You know he was never there; don't say that.

[fol. 357] Q. You say he was never there, I didn't say it.

A. No.

Q. Jones was never there?

A. Never was there, to my knowledge, and you know it.

Q. I know it?

A. Yes, because when you questioned me——

Q. Didn't you tell me you brought Jones up there?

A. I never did; you are lying.

Q. I am lying?

A. Yes, when you tell me I told you so, you are lying.

Q. You should speak a little louder so I can hear you.

A. Don't say that I told you something that is not true, Mr. Singer.

Q. Do you say now that you never told me——

A. I say I did not.

Q. (Continuing:) —on the 5th of February, that you brought Jones up to the apartment from the Parisian Dance Hall, and you introduced him to Katz?

A. I absolutely state at this time that is not true, Mr. Singer.

Q. I see. Incidentally, let me ask you: When I questioned you on the 5th, did I warn you of your constitutional rights.

A. I do not remember; I think you did, Mr. Singer.

Q. Let us get this straight.

A. You did.

Q. Did anybody browbeat you or hit you?

A. No, Mr. Singer; I was treated like a gentleman.

Q. Over at the Secret Service office did anybody browbeat you, hit you, threaten you?

A. Absolutely not.

Q. As far as the Federal authorities are concerned in this particular case, any statement that you may have made [fol. 358] was made freely and voluntarily, you didn't have to make the statement?

A. I made no statement.
Q. Anything that you said?
A. What I said was said freely and willingly; I have got nothing to hide.
Q. You talked to me for quite a while?
A. About five minutes. You weren't interested in me.
Q. Was Mr. Ameli there, this gentleman sitting here?
A. Which gentleman do you mean?

Mr. Singer: Will you stand up, Mr. Ameli?

(Mr. Ameli stands.)

A. I do not remember. He went outside and came back; whether he was sitting there, I do not remember.
Q. Was Mr. Godby there?
A. Mr. Godby was there.
Q. Was Mr. Fitzgerald, this gentleman over here?
A. What?
Q. Was he there?
A. He came in at the last.
Q. Did I ask you whether you took Jones up to the apartment?
A. I do not remember as you did, Mr. Singer.
Q. And if I did ask you, certainly you never said you did?
A. Positively, Mr. Singer.
Q. You do not know how Jones and Kutz met do you?
A. I do not.
Q. You do not know how Jones got these counterfeit bills, do you?
A. From what I have heard since, I do, but up until that time I did not.
[fol. 359] Q. What have you heard since? If you are telling us everything, tell us that too.
A. I have heard since that he received this money from a bookkeeper, which he gave in a statement to Mr. Kett, when he was first arrested.
Q. Let me ask you some questions about yourself. You are about 30 years of age, aren't you?
A. That is right, Mr. Singer.
Q. You are about 5 foot 6 or 7, aren't you?
A. 5 foot 7, that is right.
Q. You call yourself of medium build, wouldn't you?
A. I am pretty broad-shouldered.
Q. You wouldn't say you are fat?

A. I am; I weigh 180 pounds. You have got there 160.

Q. About 160 to 165?

A. That is right.

Q. Your hair is black?

A. That is right.

Q. And you are clean-shaven?

A. That is right.

Q. There is nothing particularly outstanding about your features?

A. Why don't you tell the truth in that statement? Why don't you give the description of my complexion, and what he said about the man he spoke of?

Q. Are you dark or light?

A. I am medium. Go ahead; there is something else you have got in that statement, Mr. Singer.

Q. You continue.

A. Do I look like an Italian or Spanish fellow, as described in that statement?

Q. You do, don't you?

A. Do you think so?

Q. Certainly, I would say you look Italian, if I should want to disguise your appearance.

A. You do not want to tell the real truth about the statement.

[fol. 360] The Court: Wait a minute, you are not to ask questions, you are to answer questions.

Q. If you are asking me, I might say, if I didn't want anybody to actually pick out the man, I might say you look Italian or Greek; isn't that possible?

A. No, I think you can tell I am a Jewish boy.

Q. You could tell, but the man who was describing you wouldn't want to put it too closely; he might say that?

A. But, Mr. Singer, why don't you read that whole description?

Q. You knew Jones very well?

A. But I want to answer that other—I know Mr. Jones.

Q. I asked you the question and you told us that whole story before ——

The Court: Let us just wait a minute. Answer the questions, do not volunteer so much.

Q. You did go over to this Parisian Dance Hall, did you not?

A. I admit it, Mr. Singer.

Q. And you never told Mrs. Goldstein you were a lawyer, did you?

A. I did not, Mr. Singer.

Q. You did go there, however. What did you go there for, to be a partner?

A. No, I beg your pardon; I went there to advise Mr. Jones.

Q. Wasn't there some talk between you and Jones about your going into this concession?

[fol. 361] A. Mr. Singer, there was no such thing.

Q. No such thing?

A. No such thing, because I wouldn't be considered with that type of business.

Q. What did you go there for?

A. Mr. Jones called me on the 'phone and told me——

Q. I only ask you what you went there for.

A. All right, wait until I tell you. I went there for to give Mr. Jones advice whether it was a good proposition for him to go into.

Q. And you advised him about the real estate lease?

A. Yes, I was looking over an agreement, I was to do that if he went into the deal.

Q. You were looking the business over to find out whether it was a paying proposition?

A. That is correct, Mr. Singer.

Q. Do you have any knowledge of how this man got to know Audrey Talle, this man Jones?

A. How he came to know Audrey Talle?

Q. Yes.

A. It was not through anything that I did that he knew them.

Q. Is this the same girl, Talle and Seigal?

A. Yes, that is right.

Q. You do not know how Jones got to meet them?

A. Mr. Singer, if he does know them, I do not know it, and I do not believe he knows them.

Q. You do not believe that he ever met them?

A. Well, now, when you say I do not believe he ever met them, now——

Q. I am talking about prior to the arrest in this case.

A. Yes; just a minute, Mr. Singer.

Q. Yes.

A. My office was right adjoining to the store which Eddie [fol. 362] Jones ran the soda fountain and luncheonette in, and Miss Seigal frequently visited my office.

The Court: Go ahead. Is that all?

Q. Didn't you tell me up in the District Attorney's office that it was your girl friend, Miss Seigal or Talle, who had informed the police that you had a pistol permit and you had a criminal record?

A. I said I think——

Q. Didn't you tell me that?

A. I says, I think, Mr. Singer, I was under the impression until Mr. Katz told me it was through him.

Q. When you talked to me in the District Attorney's office, that was after you had talked to Katz in the Secret Service office?

A. That is right, Mr. Singer. Let me explain this.

Q. Will you please answer my question——

The Court: Wait a minute. Let him ask his question.

Q. Before you talked to me in Brooklyn you had already spoken to Mr. Katz in New York at the office of the Secret Service?

A. That is right.

Q. When you left my office in Brooklyn you didn't speak to Katz again, you didn't go back to New York again, did you? You went right before the Commissioner, were arraigned and held in bail?

A. That is right.

[fol. 363] Q. So if you had any talk with Mr. Katz it was before you saw me?

A. That is correct.

Q. Now, you testified before when your lawyer asked you, that Katz told you that he was the man who had talked to the Police Department about your pistol permit?

A. That is correct.

Q. Now, when you saw me after Katz told you that, didn't you tell me that Miss Seigal had informed against you?

A. I blame both Katz and Seigal, because I was through with Miss Seigal after that.

Q. I do not care whether you were through with her or not, but what I want to know is this: When you told us before that Katz had informed, was it the complete truth, or is it the truth now that both Katz and Miss Seigal had informed?

A. To the best of my knowledge, Mr. Singer, there is no question in my mind but that Katz made the complaint, but I also suspect Miss Seigal.

Q. You didn't tell about Miss Seigal before.

A. Because I did not directly accuse her; I suspected it.

Q. But you never told me Katz did it; when you talked to me about this incident and when you talked to Mr. Godby and Mr. Fitzgerald it was only Miss Seigal that made that complaint; you never mentioned Katz' name.

A. Don't say that, Mr. Singer, because that is not true.

Q. You say you did not say that?

A. I surely do say I didn't say that.

[fol. 364] Q. Did you ever run around this apartment or hang around this apartment with your shirt off, dressed just like this man who you say was there that night?

A. I refuse to answer you, Mr. Singer.

Q. Well, it tends to degrade you, doesn't it?

A. No, I am a single fellow, I can do as I please.

Q. Then what is there, what I am trying to get at is, what was there so terrible about this other man running around the apartment that way?

A. Because he is a married man, both of them are married, and Audrey——

Q. Anything you may have done was all right?

A. I am a single man, and I may do anything with a woman.

Q. Do you think so?

A. That is my privilege.

Q. I see. And of course you were doing anything you wanted, and you felt it was your privilege, with Miss Talle?

A. That is correct.

Q. And you often spent many a night up in Miss Talle's apartment, did you not?

A. When you say "many a night" what do you mean?

Q. I mean you stayed over there more than one time.

A. No, I beg your pardon.

Q. You never stayed over night?

A. No.

Q. You stayed there for some considerable hours of the night, until early in the morning?

A. Well, I did make it a habit never to stay later than eleven or twelve o'clock; I think maybe occasionally one o'clock.

[fol. 365] The Court: Stop. This is not a joke, and it is not for that purpose. The people that laugh will go out.

Q. And when you stayed at that apartment Miss Molnar, she stayed there too?

A. And Miss Wishnu.

Q. And of course you would sleep by yourself?

A. When you say "sleep" don't take it for gratitude I slept there.

Q. It is no gratitude to me.

A. If I was sleeping there, I suppose I was taking a nap for a little while, but I never really slept there. When you say "sleep there" you mean all night.

Q. I mean that you sleep there.

A. Just how do you mean I sleep?

Q. When you stayed there——

A. That is right.

Q. When you indulged in what ever you say was your privilege, I mean, with this lady——

A. That is right.

Q. The other ladies were there as well?

A. At times.

Q. And Mr. Katz you now say was indulging in the same thing, except that he had no privileges because he was married?

A. Just a minute, Mr. Singer; when you make that statement I just want to make it clear so that you get it correctly. The reason why Mr. Katz has not got the same privilege as I have got is the fact that he was there undressed with another man who was married in that apartment, which was close to four o'clock in the morning.

[fol. 366] Q. If you do it at four o'clock in the morning it is wrong, but if you do it at twelve o'clock it is right?

A. A single fellow can do it any time, but I do not know about a married man.

Q. A single man can do it any time?

A. If you do not get caught.

Q. A single man can do it up to twelve o'clock?

A. After twelve o'clock.

Q. Of course, it is not wrong?

A. No, a single man can do it any time he wants, Mr. Singer.

Q. I see. So that you have told us, everything that you have said Mr. Berger, if I try to sum it up in a few words, would be that you didn't know a thing about counterfeit money, and that this charge was made against you by Katz because he thought you were fooling around with his wife?

A. I told you that yourself, I told Mr. Godby, I told that to Mr. Godby——

Q. Let us be sure it wasn't me.

A. And in the presence of Mr. Godby and that gentleman over there.

Q. Mr. Kett?

A. Mr. Kett. He was there with us. Katz said, "Harry, you were fooling around with my wife?" He leaned over and said it. I said, "Jack, you know very well I am not going to go fooling around with your wife." He said, "Would you deny it under oath?" I said, "I sure would." He said, "I am sorry, the statement I made against you: When I go to court I won't stick to that statement," and he said that very same thing to you.

[fol. 367] Q. How do you know that Katz told me? Did you ever talk to Katz?

A. Before I was released on bail he told me he told you the very same statement, that he was going to plead guilty and be sentenced in order not to send innocent people to jail.

Q. He told you that?

A. He told me that, he told me that in the pen, that he told that to you.

Q. And he of course told you that he was wrong when he said that Jones, that you gave the bills to Jones, and that Rice was innocent too?

A. He didn't mention nobody's name but me and the girls.

Q. Did you ever ask him how he met Jones?

A. No, I did not.

Q. Jones is your friend?

A. I have known him for three and a half years. When you say "friend" I want to know what you mean.

Q. Let us withdraw it. You do not classify Jones as your friend?

A. Do not say that. I classify everybody that I have had decent dealings with as a friend, but socially I never went out with Mr. Jones, not even once.

Q. Socially he is not your friend?

A. That is correct.

Q. In a business sense he is your friend?

A. That is correct.

Q. Since you have been on trial in this case——

A. Yes.

Q. And while you were out on bail, you have talked to Jones?

A. That is right.

[fol. 368] Q. As a matter of fact, it was important for you to know, and you wanted to know, how it was that you could possibly get mixed up in this?

A. No, this whole trial to me was a joke from the start.

Q. It still is a joke?

A. To me personally, I feel I have got nothing to worry about, because I know nothing and you know it.

Q. I know it?

A. I know you know it.

Q. I do not know it. I am going to tell you what I do know——

Mr. Wegman: Just a moment. I object.

The Court: Do not argue with the witness, Mr. Singer. It is your business to ask questions and his business to answer questions.

Q. Did you ever ask Jones whether he ever met Katz?

A. I asked Jones "Where did you get this counterfeit money?"

Q. I didn't ask you that. You can understand English, can't you?

A. Yes, sir.

Q. Did you ask Jones whether he ever met Katz?

A. Yes, he told me he made bets on horses and hockey with Jack Katz and another man who you described in that——

Q. And another man, Harry?

A. In that description.

Q. And that he got the bills, he told you, from this other man whom he bet with, and Jack Katz?

[fol. 369] A. That is correct.

Q. But that he didn't get the bills from Jack Katz?

A. He told me Jack Katz paid him off, but he didn't say Katz, he said Jack.

Q. And he told you where he paid him off, of course?

A. That is right.

Q. Where was it?

A. 43rd Street and Broadway, outside of Gray's Drug Store.

Q. Did he tell you how much he won?

A. He told me that day he won over $200.

Q. Well, of course, he made a mistake when he told the agent he made only $146?

A. I do not know anything about $146.

Q. Do you think Mr. Katz was telling the truth?

A. I do not know; that is what he told me.

Q. You think Mr. Katz is probably lying?

A. I don't believe anybody unless I know it is the truth, I take it for what it is worth. But whether Mr. Katz told the truth or not, I do not know.

Q. You take Jones' statement for what it is worth too?

A. Correct, absolutely.

Q. That is, you do not know whether he got this money from a bookmaker or from Katz?

A. I do not know where he got it.

Q. Or whether he got it from anybody at all?

A. That is correct, Mr. Singer.

Q. You say that you never carried this gun?

A. The gun was always in the office.

Q. Can't you answer me, please?

A. That is right.

[fol. 370] Q. You testified before you never carried the gun?

A. That is correct, Mr. Singer.

Q. And you, of course, when you made application for the gun, you made application for it upon the theory that you were collecting a lot of money and you wanted protection?

A. That is correct.

Q. And probably that you collected the money at night, and couldn't get to the bank in time?

A. Don't say that; that isn't true. I collected the money during the day.

Q. You collected the money during the day?

A. That is right.

Q. And sometimes did not deposit it until the next day?

A. That is right.

Q. When you collected the money you didn't collect it in your office, did you?

A. I went out to collect it.

Q. And the gun was in your office, and of course that would be no protection to you when you went in an apartment house collecting for rent?

A. That is correct, Mr. Singer.

Q. Now, you never carried the gun at all, you said?

A. No, Mr. Singer.

Q. Yet you renewed—how many times did you renew this pistol permit?

A. I think it was three times.

Q. And on each occasion you renewed it upon the same ground, that you needed protection because you were collecting large sums of money?

A. That is correct.

Q. As a matter of fact, you never needed that protection because you left the gun in the office?

[fol. 371] A. Well, I would stay in the office quite a long time with the money in the files, and in the morning I would make up my deposit and I would send it to the bank.

Q. Did you go to the bank with the deposit?

A. I never went to the bank, but maybe a couple of times over a period of two or three years.

Q. Did the person who carried the deposit to the bank carry the gun?

A. No, absolutely not; it never left the office, Mr. Singer.

Q. Then truthfully, as far as the protection was concerned, you meant it was only to protect your office?

A. The money was in the office.

Q. Not for you when you were collecting?

A. That is correct.

Q. You made an application for this gun permit?

A. That is correct.

Q. And you knew that any man who had been convicted of the crime of robbery could not get a permit?

A. Well, truthfully speaking, I did not know it, but I did not want to conceal my past.

Q. Let me get this straight, you can answer this very easily.

A. Yes.

Q. You say that you did not know that a man who had been convicted for attempted robbery or robbery in the third degree, you say you did not know he could not get a pistol permit?

A. I did not think that that would hold me back from getting a permit, if my reputation stands out good.

Q. You thought, it was your opinion, whether you were convicted of a crime or not, you still could get the permit?

A. That is correct, Mr. Singer.

[fol. 372] Q. So that it wasn't your viewpoint to try to hide the conviction, it was simply that you felt it wasn't important?

A. No, don't say that. The reason why I did not conceal it on the application——

The Court: You did not what?

Q. You did not conceal it?

A. The reason why I did not put on the application I was convicted of a crime was that Lieutenant Hughey McGovern, who is the head of the Detective Division, and Captain Keene, who is the captain of that precinct where I made the application, knew me very well and thought very highly of me, and I didn't want to disclose my past.

Q. But you realized, didn't you, if you had disclosed your past you couldn't get a permit to carry a gun?

A. I do *now* know about that, Mr. Singer. I wasn't sure that that was true, that that was so serious an offense, when I made the application.

Q. Captain Keene had nothing to do with the real estate licenses, did he?

A. No, but Captain Keene and Lieutenant McGovern checked up my record.

Q. Did Captain Keene and Lieutenant McGovern have anything to do with the issuance of your real estate brokerage license?

A. No, they did not.

Q. You did not have to hide it from them on the real estate application?

[fol. 373] A. Not from them, but it was my only way of making an honest living.

Q. So that you concealed the fact that you had been convicted so that you could get that license to be a broker?

A. That is correct. I did not think there was any harm in that, for a man to have been convicted.

Q. You did not know that it was a crime?

A. No, I did not.

Q. Do you have that same feeling about your testimony here? You have sworn to tell the truth here?

A. I surely have.

Q. Do you have any reservation in your mind about what you think will make no difference when you are under oath, and what you think will make a difference?

A. A man when he is sitting in a court room being tried for a charge like this should, of course, tell the truth, and that is what I am here for.

Q. And when a man swears before a notary public to certain statements, makes an affidavit that everything he says in it is true, then he does not have to tell everything if he does not think it is important?

A. That is wrong, Mr. Singer. I said before that I tried to hide my past because I was leading a clean, respectable and comfortable life.

Q. But you honestly admit now that you deliberately intended to swear falsely?

A. If I thought it was a serious offense I would not have done it.

Q. I have no interest in whether you think it was serious or not. All that I am asking you now is whether you [fol. 374] frankly admit that you swore falsely and deliberately, with intent to conceal it?

A. I do not know just how to bring that out, Mr. Singer, but I tell you now that I concealed it because I wanted to lead a clean life, and I didn't want my past to be open to the public.

Q. And you knew that you were concealing it when you swore to that paper?

A. I did, but I didn't think it was serious.

Q. I do not care whether you think it was serious or not; I want to know whether you lied and knew that you lied?

A. I did, Mr. Singer.

Q. And you did it under oath, that is what I want to know, whether you thought it was serious or not?

A. I did, Mr. Singer.

Q. Look at this application. Is that your signature on there?

A. That is.

Q. Was that sworn to before the notary public whose name appears on the left?

A. That is correct.

Q. And when you sworn to that you swore to a falsehood?

A. That is right.

Mr. Singer: I offer that in evidence.

Mr. Wegman: May I ask one question about this before it is admitted?

The Court: I do not know; what is it?

Mr. Wegman: I would like to ask the witness whether those are his fingerprints on the back, and whether they were on there at the time that application was filed.

[fol. 375] The Witness: That is something I can't remember; I imagine they must have been; I can't remember.

The Court: He wants to know whether they were on there.

The Witness: That is something I can't remember.

Q. You say that they were on there?

A. I assume they must have been on the application for a pistol permit.

Q. But at least you put your fingerprints on there?

A. I assume I did.

Mr. Wegman: No objection.

(Marked Government's Exhibit 10 in evidence.)

Q. Tell me, are those your fingerprints or aren't they, that is a simple thing?

A. How can I tell at this time? This happened back three years ago.

Q. How many times have you had your fingerprints taken, and I do not speak about this in connection with any offense, I mean just the point of taking your fingerprints?

A. I do not remember; maybe three or four times.

Q. How could it be three or four times? Can you tell me where it was?

A. It was owing to the fact that I had a pistol permit.

Q. Did you have your fingerprints taken then?

A. Yes.

[fol. 376] Q. You said before you didn't remember whether they were taken or not.

A. I didn't say that. I said I didn't know if those were my fingerprints.

Q. How many times did you have your fingerprints taken in connection with your pistol permit?

A. Oh, maybe four or five times, three or four or five times, something like that.

Q. Why do you think they were taking your fingerprints?

A. Why?

Q. Yes, why do you think they were taking your fingerprints?

A. They take those on every pistol permit application.

Q. I want you to look at this Exhibit 10; look at the back of Government's Exhibit 10; is that your signature?

A. Yes, that is my signature.

Q. Was that put on there before the prints or after?

A. That was put on after the prints, Mr. Singer.

Q. Didn't you know that they were taking your fingerprints so that they could check up on whether or not you had been convicted of an offense before they gave you a pistol permit?

A. I do not know; I did not know the routine they go through.

Q. Now I show you this paper and ask you whether that is your signature, naming Harry Berger; is that your signature?

A. That is right.

Q. Did you swear to that before a notary public?

A. I did.

Q. When you sworn on this paper you falsely stated you had never been convicted?

[fol. 377] A. That is a renewal of the pistol permit.

Q. The same permit?

A. The same permit.

Mr. Singer: That is offered in evidence.

The Court: Of course, the jury understands these papers are received only on the question of the credibility of the

witness; you understand that. They have nothing to do with that particular offense charged in this indictment; they are received only on the question of his credibility.

Mr. Wegman: I have no objection to this.

The Court: All right; received.

(Designated Government's Exhibit 11 in evidence.)

Q. In 1926 you say you became a notary public?

A. No, I did not. In 1926, I became, whether it was a real estate salesman or real estate broker, I do not know.

Q. When did you become a notary public?

A. I believe it was in 1930 or 1931.

Q. You had to be taken before a Supreme Court Judge and be introduced and have a Supreme Court Judge approve your application?

Mr. Wegman: I object to the question as assuming a state of facts that is not so; any Judge can approve it.

[fol. 378] Q. Leave out the Supreme Court Judge, any Judge of a court of record, isn't that so?

A. The Judge that signed that application knew me for nine years, knew me for quite a few years.

Q. Who was it?

A. Judge Robinson.

Q. Of what court?

A. The Municipal Court.

Q. He didn't know you had been convicted of the crime of robbery, did he?

A. He did not.

Q. You kept that from him?

A. I surely did, from everybody.

Q. As a notary public, you appreciated the significance of the oath that you administered when you took an oath, didn't you?

A. I did.

Q. You realized that if a man swore before you as to a fact, that that oath had some weight before a court or in a proceeding where that affidavit might be used, you realized that, didn't you?

A. Well, that was the regular procedure, Mr. Singer.

Q. But you realized that, you realized it when you acknowledged a deed?

A. I never acknowledged any deeds. The only papers I acknowledged were dispossesses or something like an operator's license.

Q. You realized that there was certain——

A. I used it in connection with my business.

Q. (Continuing:) ——that there were certain statements in those papers that were sworn to before you, which people wanted to know about, and you took their oath and it was presumed that everything that was in there was true, was [fol. 379] it not?

A. That is correct.

Q. Was there anything that you did that enabled you to consider whether a man was telling the truth or not?

A. I did not consider the man; I was only taking the acknowledgment or signature.

Q. And that he was telling the truth?

A. That is correct.

Q. Swore to it before you?

A. That is right.

Q. Meaning that what he said in that paper was true?

A. Yes.

Q. So it did not make any difference to you whether he was telling the truth or lying?

A. If I knew he was lying, I probably wouldn't sign it.

Q. You didn't tell the Notary Public who signed these applications, Exhibits 10 and 11, that you were lying about your conviction?

A. I did not.

Q. Because you knew if you told him that he would not swear to it just as you would not?

A. That is correct, Mr. Singer.

Q. As I understand, this pistol permit permits you to carry a revolver on your person and not in your office?

A. That is correct.

Mr. Wegman: If your Honor please, I think a paper marked in evidence speaks for itself.

The Court: The paper speaks for itself.

Mr. Wegman: The paper on the face of it shows it was to cover the premises.

[fol. 380] The Court: I say it speaks for itself.

Mr. Singer: But Government Exhibit 11 says, "I hereby apply for a license to carry a revolver or pistol concealed on my person," and the rest is all stricken out.

Mr. Wegman: That is a subsequent one.
Mr. Singer: I can't help it.
Mr. Wegman: This is the original application.
Mr. Singer: This is the renewal for 1933.

Q. In this renewal for 1933 you had stricken out the fact that you wanted it on the premises, but you wanted to carry it in your pocket?

A. That is not true.

Q. Look at it; is that on there or isn't it? Take a look at it.

A. Mr. Singer, if this is stricken out, I at no time knew it. But on the pistol permit it says "possession," and we carry over here, and it says "possession on the premises." If that was on there at the time, I am almost positive it was not.

Q. I did it, I suppose.

A. I didn't say you done it, Mr. Singer.

Q. I thought I did it, so here somebody was framed again?

A. It would be ridiculous to have a permit just to carry it on your person——

The Court: The jury will disregard that. That isn't evidence.

[fol. 381] Mr. Singer: I would like to make a request, that we have the fingerprints of this defendant taken.

The Court: We can't make him, I can't make him.

Mr. Singer: For the purpose of comparison with the prints on the pistol permit.

The Court: I do not think I can make him.

Mr. Wegman: If your Honor please, I assume when this defendant was arrested he was fingerprinted over at the office of the Secret Service agents. What has happened to those prints? Is there any reason why they are not produced?

Mr. Singer: They are not here now.

Mr. Wegman: Is this staged to make an impression on the jury? Is it just a show to impress the jury?

The Court: Not at all. If you gentlemen would stop telling the jury so much and both of you ask questions, we would do better. There is no dispute about it whatever.

Mr. Singer: If your Honor please, I am confronted with a rather peculiar situation in which a certain record of

mine is not available, but I will try to get it before we are through.

[fol. 382] Q. Do you remember seeing Miss Talle the Sunday night before you were arrested?

A. Yes, I do.

Q. At the Victoria Hotel in New York?

A. That is not true.

Q. What hotel?

A. At the Wellington Hotel.

Q. You came there pursuant to a telephone call that you had gotten?

A. She had called me and wanted to talk to me, which I refused, and she said it was for my benefit that I come over, which I did.

Q. Isn't there something you didn't tell us about before?

A. There might be a lot of things, if you ask me I will tell you.

Q. What I am trying to find out from you is, is there anything about this case that you haven't told us?

A. I told you so much about it, I do not remember everything unless you remind me.

Mr. Wegman: I think, if your Honor please, the proper method of procedure is for the Assistant United States Attorney to ask questions.

The Court: He is doing it, isn't he?

Mr. Wegman: He is arguing with the witness, it seems to me.

The Court: Proceed.

Q. That Sunday night, did you see Katz that Sunday night before you were arrested?

A. I did not.

Q. Do I understand that you have a complaint to make [fol. 383] because Miss Wishnu was not arrested or held by me?

A. I am not here to talk about that at the present time.

Mr. Wegman: I object.

The Court: He went into it at great length in response to your questions.

Mr. Wegman: About this particular part I did not ask any questions.

The Court: He went into it; I didn't say you, I said he went into it at great length in reply to your questions, and he can be asked about anything that he testified on in response to your questions. He wasn't stopped.

Q. Will you answer me, please?

A. Say that again.

Q. Let me ask you the next question. Did you state that Miss Wishnu had bought counterfeit money, and you wanted to know why I turned her out?

A. I did not say that.

Q. Did you intend by any inference or anything at all to convey that there might be some corrupt reason for Miss Wishnu being turned out? If there is, you say so now.

A. I do not care to disclose that to this Court.

Q. You will say so.

Mr. Singer: I ask the Court to direct the witness to answer the question.

The Court: Read the question and you answer it.

[fol. 384] (Question repeated as follows: "Did you intend by any inference or anything at all to convey that there might be some corrupt reason for Miss Wishnu being turned out? If there is, you say so now.")

A. I do not know.

Q. I didn't ask you that, did I?

The Court: Read the question again.

(Question again repeated by the reporter.)

The Court: Now answer the question.

A. No, Mr. Singer.

Q. Now, tell me this, whether it is right or wrong, whether Miss Wishnu's release has got anything to do with you? It has nothing, has it?

A. Not that I know of.

Q. And you have no claim that she was released by virtue of any agreement with anybody?

A. I do not know.

Q. Well, why did you say when you took the witness stand that Miss Wishnu was turned out, and there was something peculiar or funny about it? What did you mean?

A. Do you want me to answer that?
Q. Yes.
A. Why did you give Miss Wishnu your home telephone number, if you want to bring it out?
[fol. 385] Q. That is what I want to hear. Do you say I did?
A. She said you gave her your telephone number, Miss Wishnu said, "He gave me his 'phone number, and if I find anything about this case, to call him up at his home."
Q. Do you have my home telephone number?
A. That is Miss Wishnu.
Q. Do you have that number?
A. I haven't the number.
Q. Do you know what the number is?
A. I do not remember what it is.
Q. Do you remember the exchange?
A. No.
Q. Do you remember a single digit in that exchange, or number?
A. No.
Q. Did you see it written on a piece of paper?
A. In her little book; she had a little book with her.
Q. Do you remember anything about that number?
A. No, I never seen her since; I do not know.
Q. Have you tried to bring her here to this court to show you that number?
A. Yes, I have.
Q. Where did you try to get her?
A. I tried to locate her all over, but I couldn't find her.
Q. Where did you look for her?
A. I inquired from all her friends that I have known.
Q. Where did you inquire?
A. From many friends of hers.
Q. Did you inquire about her from Katz?
A. No, I should say not; never.
[fol. 386] Q. Did you ask Miss Molnar?
A. I did.
Q. Did she know?
A. No.
Q. Did you ask Miss Seigal?
A. Yes.
Q. Did she know?
A. No.
Q. You have seen Miss Seigal since your release on bail?

A. I have spoken to her.

Q. Have you been over to her apartment?

A. No; I do not think she has got the apartment.

Q. I do not know, I am asking you. Don't ask me.

A. No.

Q. Unless you think she has my home telephone number; do you?

A. I do not know.

Q. Did she say she had?

A. I never asked her.

Q. How did it happen you didn't ask her that?

A. Because I wasn't interested.

Q. You asked Miss Wishnu?

A. No, she told me.

Q. She told you what?

A. She told me you had given her your home telephone number.

Q. Is it your claim that Miss Wishnu and I made any agreement whereby she was to be turned out?

A. You know I can't tell you that.

Q. You kept something back. Now maybe you have got more to tell. Let us have it.

A. I do not remember.

Q. I want you to tell us this story about the telephone number.

A. All right.

Q. If there is anything else you want to tell, please tell it.

A. When it comes to answering a question, bring it out that way, and I will tell it.

[fol. 387] Q. I am trying to find out if there is the slightest detail, the slightest item that you think or know about, about Miss Wishnu's release. I want you to tell me about it now.

A. I do not know. I haven't see the number since.

Q. Let us see if I can ask you some questions; just what was it that she said to you that I told her when I gave her my home telephone number? Did I give her my home address?

A. No; she said, "Mr. Singer gave me his home 'phone number, and that he wanted me to call him up after nine."

Q. After nine?

A. After nine.

Q. Was that after nine in the morning or night?

A. At night.

Q. You said before she said that I told her to call me if she learned something about the case.

A. That is what she said.

Q. You just left that out now?

A. How is that?

Q. You just left that last part out now when you said it, didn't you?

A. What do you mean, last part?

Q. You just left that last part out?

The Court: Go ahead.

Q. Did she say she was going to meet me for anything except for business purposes?

A. No.

Q. If she was to meet me?

A. Just told me that you gave her your home telephone number, and told her to call you up after nine o'clock in the evening if she found out anything about the case that you could help me with, that is what she told me.

[fol. 388] Q. Even if that is so, what is wrong about that, that you have been squawking about all morning.

Mr. Wegman: I object to the question.

The Court: Yes, strike out the word "squawking." What is there wrong about that?

The Witness: I do not know; let him answer that.

Q. You answer it.

A. I do not know.

The Court: You made a statement here on the stand, and now you are asked about it and you will answer the question.

The Witness: Well, I did not think it was the right thing for the District Attorney to give a person who was brought in on a counterfeit charge his home 'phone number and then release them.

Q. You didn't think it was right for me to look for any further information about this case here, did you?

A. Oh, yes.

Q. You didn't add that last part just now, or do you drop that from your calculations?

A. I am just testifying what I actually know, Mr. Singer.

Q. You are telling what you want to tell?

A. No.

Q. Mr. Berger?
A. No.
Q. Now, what kind of a place is this Parisian Dance Hall?
[fol. 389] A. When you say what kind of a place it is, what do you mean? It is a place where people go down to dance. There are hostesses there, and there is a lunch counter, and there is a soda fountain and I think tables.
Q. Do you remember the occasion when you went to the Parisian Dance Hall with Jones?
A. I do, that is right. The exact night I do not remember.
Q. Was it in December?
A. Yes, it was the first week in December, the first time.
Q. Long before Christmas?
A. Oh, yes, absolutely.
Q. And you think it was the first week in December?
A. I think it was.
Q. Sometime before the 10th of December?
A. It might have been a day or two before, or it might have been even the 10th.
Q. You were telling us before about attending a housewarming in the apartment of Miss Talle on the 15th of December,
A. That is right.
Q. And that that was the first time that you ever met Katz?
A. That is correct.
Q. Now, Katz, of course, testified that he met Jones and you at this apartment, and that it was a little after, a little before Christmas of last year. You heard Katz say that, didn't you?
A. Yes, I did.
Q. Now, you say you never saw Jones in that apartment, as far as you know?
A. As far as I knew, I am positive I didn't see him.
Q. Who was this man that was in this room running around half naked?
[fol. 390] A. I asked Mr. Godby, and he told me to keep his name quiet.
Q. Do you know his name?
A. No.
Q. How does it come that Mr. Godby asked you to keep his name quiet if you didn't know his name?
A. Well, he thought that I did know the man's name.

Q. If you do know it, please tell me that name.

A. I do not know the name. You can ask Mr. Godby; he can tell you.

Q. How can he tell us?

A. Because he asked me to keep the name of that man quiet, otherwise he would give me the works.

Q. And you have kept that name quiet, you have kept it quiet so that you wouldn't get the works?

A. I didn't know the name; I was tickled to death to get away from him.

Q. Well, as a matter of fact, didn't you go to the 47th Precinct Police Station to see the police captain, and didn't you say that you wanted to find out that man's name?

A. I didn't go to see the police captain, but did go to the detective there.

Q. Didn't you say you went to the police station?

A. I did, but I didn't go to see the police captain.

Q. But you went to the police station?

A. Yes, but I didn't find out the man's name.

Q. Why do you say you didn't find out the man's name?

A. That was after I spoke to Mr. Godby.

[fol. 391] Q. What efforts did you make to learn this man's name?

A. Well——

Q. As a matter of fact, you know that that man had no connection with the United States Government; you have learned that, haven't you?

A. Well, he is connected with the department somehow.

Q. Not with the United States Government, you knew that?

A. Well, he said he did; he belongs to some department.

Q. You knew he had nothing to do with the Government, and you brought that in for atmosphere?

A. No, I did not. Why don't you tell what that man's name is? You know it.

Q. I know it?

A. Mr. Godby has told you.

Q. He told you I know it?

A. You know, Mr. Singer. Don't try to hide that man's name from us.

Q. Was I in that apartment that night?

A. No, but Mr. Godby——

Q. Was Mr. Godby in that apartment?

A. No, but he has been there.

Q. After that?

A. No, I think he had been there before, if I am not mistaken.

Q. You do not claim Mr. Godby had anything to do with those girls, do you?

A. I would not swear for anybody.

Q. It is highly possible, is it?

A. It is possible.

Q. Do you think that Agent Fitzgerald had anything to do with those girls?

A. I do not know if he was there or not; I would not swear he was.

[fol. 392] Q. It is highly possible that he went there?

A. No, I won't swear for anybody, Mr. Singer; you know that.

Q. Do you include as those who may have been there the Court and all the jurymen and your own counsel?

A. Mr. Singer, you ask me a question. May I answer it?

Mr. Wegman: I object to the question.

The Witness: Are you serious about that?

The Court: I am not going to stop him because the question includes the Court. I will let him answer it.

Mr. Singer: I would like to have an answer to it.

The Witness: Mr. Singer, you asked me the question before——

The Court: You answer this question.

(Question repeated by the reporter.)

A. I should say not; that is ridiculous.

Q. It is ridiculous to include the Court and the jury and your own counsel, but it is perfectly feasible to include Mr. Fitzgerald, Mr. Godby and myself; that is your answer, that is all.

A. No.

Mr. Wegman: I object to the question——

Mr. Singer: That is all, but I may think of some questions over the noon recess that I would like to ask him.

[fol. 393] The Court: He has answered that question that it was none of you. We will take a recess now until two

o'clock. (Adressing the jury) Do not allow anybody to speak to you about the case, do not discuss it among yourselves. We will adjourn until two o'clock.

Recess until 2 P. M.

Met pursuant to adjournment at 2 P. M.; present as before.

HARRY BERGER resumed the stand.

Cross-examination continued.

By Mr. Singer:

Q. Now Mr. Berger, do you remember yesterday when the court recessed for a few minutes and you saw me out in the hall; do you remember that?

A. I do, Mr. Singer.

Q. You talked to me out in the hall?

A. I talked to you?

Q. Yes.

A. No.

Q. You say you didn't say to me out in the hall yesterday, "You wait until I take the stand and I will take care of you"? You didn't say that yesterday?

A. No; I didn't, Mr. Singer; you are lying.

Q. I am lying, you are right. You didn't say that at [fol. 394] all?

A. No.

Q. You didn't speak to me out in the hall?

A. I never did speak to you outside since this case started, except the day I was in your office, when you questioned me.

Q. I said yesterday.

A. No, Mr. Singer.

Q. Do you mean that seriously?

A. I said no.

Q. That never happened?

A. No, Mr. Singer, it did not.

Q. You did not say that to me?

A. I did not.

Q. Of course, I have just made that up?

A. What do you want me to answer you?

Q. I want you to tell me I am lying, is that so?
A. I told you that once.
Q. No question about that at all?
A. No question about that.
Q. I have lied to you at least twice, once when I asked you whether you told me that you took Jones up to the girls' apartment, and now when I ask you whether you spoke to me outside during recess?
A. That is correct.
Q. Do you say I lied about you or to you, on any other occasion?
A. I do not recall.
Q. How many times have I lied about you?
A. I can't recall.
Q. It is so many times you do not recall?
A. You probably don't lie, you were just asking me questions to see if I would answer them the way you wanted.
Q. But you said I lied about Jones.
A. I say you lied when you say I took Jones up to the apartment, and also I never spoke to you in the hall and said, "Wait till I get through with you." I would have more [fol. 395] common sense than to tell that to you.
Q. You said it?
A. I did not.
Q. The only reason you did not say it is because you would have better sense?
A. No, I have got enough common sense not to talk to you that way.

Mr. Wegman: I object to that as already covered.
The Court: He has answered it; all right.
Mr. Singer: That is all, with this exception, that I would like to ask your Honor leave to ask a question or two as soon as some papers I have sent for arrive here.
The Court: All right.

Redirect examination.

By Mr. Wegman:

Q. Mr. Berger, to the best of your recollection, at the time you made that application for a pistol permit, you put your fingerprints on the application, is that correct?
A. That is correct.

Q. And without being a fingerprint expert and studying those fingerprints, do you know whether they are yours, subject to the fact that you believe those are your fingerprints?

A. That is correct.

Q. You had no desire whatsoever to hide your fingerprints, did you?

A. No.

Mr. Wegman: That is all.

[fol. 396] Recross-examination.

By Mr. Singer:

Q. It is rather peculiar, isn't it, that the Police Department, in checking those fingerprits, did not find the fingerprints of your prior conviction?

Mr. Wegman: I object to that as hypothetical.

The Court: I do not know whether——

Mr. Wegman: He would not know that. Do you know anything about that?

The Witness: How should I know a thing about that?

Q. I didn't ask you how you should know, I asked you whether you do know, and I do not care whether you should know or *it*. What I want to know is whether you do know?

A. No.

Mr. Singer: That is all.

Mr. Wegman: That is all.

The Court: You reserve the right to question him when you have some papers?

Mr. Singer: That is correct.

Mr. Wegman: Now, if your Honor please, I have been trying to get three more witnesses who have assured me that they were going to be in court this afternoon. I had no opportunity to subpœna them between the close of the session last night and this morning.

[fol. 397] Mr. Singer: I have no objections if by the time this case is finished those witnesses may be called.

The Court: We are not going to continue the case, but if they come in in the meantime, that will be all right.

Mr. Wegman: With that reservation then the defendant Berger rests.

The Court: Surely.

EDWARD JONES, one of the defendants, called as a witness in his own behalf, having been duly sworn, testified as follows:

Direct examination.

By Mr. Crooks:

Q. Where do you live?
A. 4825 45th Street, Sunnyside, Long Island.

The Court: What street?
The Witness: 45th Street.

Q. How long have you lived there?
A. I am on that particular street about eight months.
Q. And in that neighborhood?
A. In the neighborhood five years.
Q. Are you married?
A. Yes.
Q. Do you live with your wife?
A. I do.
Q. What is your business?
A. I had a concession in a soda and luncheonette for the past three and a half years.
[fol. 398] Q. Whereabouts?
A. At 46th Street and Queens Boulevard, Sunnyside.
Q. Now, it has been testified here that—and you are charged in an indictment that you passed on two occasions hundred dollar counterfeit bills. Do you remember the testimony of Mrs. Goldstein?
A. I do.
Q. In which you, in payment of some bill which you owed her at this dance hall over in New York, that you gave her a hundred dollar bill?
A. I did.
Q. That is true?
A. That is true.
Q. Will you tell the jury the circumstances under which you gave her that bill?
A. Well, it was a—this place I intended to buy, to rent a concession from her, and I went there with the purpose of watching the business, to see if it was payable, if it should pay. And in the course of conversation the matter came up about drinks. I asked if it was possible I could get a drink, because I am a drinking man, and she got me a bottle

of rye whiskey for $3.50. And I in turn asked her if I could pay her the following night which was on a Friday night, that I had no change only a hundred dollar bill and a few cents. And she told me that she would gladly change the bill if it was good. So I took the bill out and she showed it to several people there, I mean at least five people in the dance hall, people that have dealings with bills and it was supposd to be good, they said it was. And she took me to her house and got change, and came back and gave me [fol. 399] $96.50 in good money, and the pint of whiskey, pint of rye whiskey, in change for the bill.

Q. How long had you known this Mrs. Goldstein?

A. About three months at that time.

Q. How many times do you say that you saw her during that period?

A. About three times a week in the three months.

Q. About what?

A. Three time a week.

Q. She took you to her house on that night when she wanted to get the money to change the bill?

A. That is right.

Q. Do you state she examined it very closely?

A. She did.

Q. And then had some other people look at it?

A. That is right.

Q. And then you stayed at her home sometime that night?

A. I stayed there all night.

Q. You stayed there all night?

A. Yes.

Q. Then when was the first time that you heard that the bill that you gave her was supposed to be counterfeit?

A. The following morning, about ten o'clock Friday morning, I went to the place of business that I had, and the lady that I rented from told me that the Secret Service man was there and had brought, had said that I gave a counterfeit hundred dollar bill, and had left his card for me to get in touch with him. I took the card, and it was Agent John A. Kett, Secret Service Bureau. I called up the number that was on the card and asked for Mr. Kett, and he was not there. I immediately called Goldie Goldstein, the [fol. 400] party that was with Mr. Kett, and told her to meet me in half an hour and go to the Secret Service Department with me. She said she would gladly do it.

I went back to the house. It was raining, and I had a raincoat on. I went back to change my raincoat for an overcoat. It had stopped raining at that time. And Mr. Kett was in my—at the house——

Q. What?

A. He was at my house, and he said, "Is your name Jones?" And I said, "Yes." He said, "I want to talk with you." I said, "Sure, come on up and we will go upstairs."

Q. Raise your voice up.

A. I said, "Come on up and we will go upstairs in my house." And he walked in, and he said, "Who is this Goldie Goldstein?" I said, "Oh, a party I am thinking of buying a concession from, renting a concession from." He said, "Well, she is raising hell; you gave her a counterfeit bill last night, she claims you gave her a counterfeit bill last night, and I want to talk to you about it. Where did you get the bill?" I told him at the time that I had gotten the bill from a bookmaker with whom I had placed several bets for the previous two weeks on horses. I have been betting on horses about a year every day. And Mr. Kett took the hundred dollar bill out and said, "Do you recognize it?" And I said, "Well, it is a hundred dollar bill, I cannot say if it is the same one, possibly it is, because I gave [fol. 401] her a hundred dollar bill last night." And he asked me the different horses I placed bets on, and I took a slip of paper out that I had, I still have it here with the horses named, and he copied them down at the time, and these horses actually won on that particular day. He looked at the slip, he wrote down several numbers, and he told me at the time, "On what occasion did you give her a bill?" I told him, "I bought a pint of whiskey." He said, "Why should she sell you whiskey?" I told him I had known the lady three months, and I understood it was customary to sell whiskey downstairs under cover, without a license. And he at the time told me that the character of Goldie Goldstein didn't seem to be so good, that it was possible that she had a previous counterfeit bill and was trying to switch the bill on me, to say that I had given it to her. So I said, "Well, that seems plausible. She was very anxious to change the bill." So I stayed in the house from about two o'clock until 5:30, and he asked me if I had the whiskey.

Q. What time?

A. About 2 to 5:30.

Q. Was that in the morning?

A. That was Friday, in the afternoon. He asked me if I had the whiskey, and I told him "yes, I got the bottle, there is a little bit in it," and as I remember he said it was very bad whiskey. He asked me to go with him to 43rd Street and Broadway to the party that I had gotten the bills from, that had given this one hundred dollar bill to me. Previously I thought I would have to give this $100.00 back [fol. 402] to Mrs. Goldstein, which I should have done. Wanting to make good for it myself, to be sure I wouldn't be gypped out of it, I told him to go with me. He said to me, "I have lost all day on this case, and I have gotten no place." He says, I am going home. If you see the bookmaker, if he has counterfeit bills, call me at my home," and he gave me his card with his telephone number at his home.

I went to New York that Friday night, and I saw this bookmaker, and he told me he had paid five or six hundred dollars afterwards, and had never had a counterfeit. He said, "Bring anybody that you want, but give me a chance to get rid of these slips I have in my pocket for the bets." He didn't want to be caught—at that time the Commissioner had the money, and he didn't want to be caught with the slips.

I called Mr. Kett up and told him that the bookmaker was with me, had shown me the money in his pocket, and as far as I could judge the money was good. He had several hundred dollar bills at that time. I went back. He said not to bother him any more in the case. That was about 8:30 at night on Friday night. I went back to my home, and I stayed over night. Saturday night I came up to the place I had bought the suit in——

Q. I show you this bill, Mr. Jones, and ask you to look at it. That is Government's Exhibit 1, I believe, in evidence?

A. Yes.

Q. Do you notice your name on that bill?

A. I do.

[fol. 403] Q. How did you come to sign your name on it?

A. Mr. Kett asked me if I thought it was the bill. I said, "I have no way of identifying it." He said, "Just put your name on it."

Q. At the time you did not know when Mr. Kett showed it to you that that was the same bill?

A. I did not.

Q. That you had given this lady?

A. I did not.

Q. Did you have any way of telling whether it was or was not?

A. No way at all.

Q. Yes. You knew you had given her a hundred dollar bill——

A. I knew I had given her a hundred dollar bill.

Q. But as far as being able to tell that this was the same bill, you couldn't do that?

A. I couldn't tell.

Q. At the time that you passed this bill did you believe that the bill was counterfeit?

A. No, I did not.

Q. Did you believe that it was good money?

A. I did.

Q. You say that you got this bill that you passed on Mrs. Goldstein from the bookmaker?

A. I did.

Q. Do you know his name?

A. I know his first name is Harry. I had been betting with him about a week.

Q. Whereabouts?

A. 43rd and Broadway. He is a street bookmaker. There are several in the forties in New York, and they make bets on the street, because if you are caught on the street they [fol. 404] are never arrested, but if they are caught in an office, they are arrested, so they told me.

Q. Now I show you Government's Exhibit 2 marked in evidence and ask you to look at that. That is a bill which the Government claims you passed upon; was it Berger, is that the name?

A. Berger.

Q. For the suit of clothes?

A. Yes.

Q. Will you tell the jury under what circumstances you happened to give him a hundred dollar bill?

A. On the Thursday—this bill was given to Mr. Berger before the Goldstein bill. On Thursday I went to Mr. Berger's place—I made this bet in the afternoon on Thursday, I think around 1:30. The first race went on at two

o'clock, I remember it was somewhere around then; I made the bet around 1:30, and I was paid off at that time.

I went down to Mr. Berger's store about 3:30. I have a bank account in the branch of the Bank of Manhattan that is on 46th Street and Greenpoint Avenue. I went there—the bank was closed, and I went to Mr. Berger.

Previously, the day before I made these bets, I took $90 of my wife's money to make the bets with, and I had to replace the money without her knowledge if I could. So it was a case of where I had to change the bill. I went into the bank and they were closed. I went down to Mr. Berger's, I needed a suit, and I bought a suit. I asked Mr. Berger at the time if I could leave a deposit with him until the following day that I could deposit this bill in the bank, be-[fol. 405] cause I didn't have enough money to pay him in full. He told me that he thought he could change the bill. He looked in the register, and he took the bill, and then he went to the bank, I am quite sure he left the store. Then I got measured for the clothes. I told him to deliver the suit at my home, and to the best of my knowledge—I was drinking quite heavily that day—to the best of my knowledge I wrote the address on a piece of paper, I am quite sure, 4825 Forty-fifth Street. I told him to deliver the suit at seven o'clock, I would be home at seven.

I went over and made several bets in the immediate neighborhood of Sunnyside with local bookmakers with whom I had been betting quite often; and I also bet on a hockey game at Madison Square Garden that night, made it in the afternoon with these local bookmakers.

I went back by the store about six and told Mr. Berger—Mr. Berger wasn't there, I told the clerk if my suit was ready I would take it with me as I wanted to go to the hockey game, and I would have to be over there at 8:30, and seven o'clock would be too late to deliver it at home. The clerk got the suit for me—he had already been paid before, and I got the change for the bill. And I got the suit and went home.

That night I went to Madison Square Garden to the hockey game, and I came out about 11:30, and I went to Mrs. Goldstein's place, and there is where the second bill was given her.

[fol. 406] Q. Did you receive both of these hundred dollar bills from the same person?

A. I did.

Q. At the same time?

A. At the same time.

Q. Was it just the two or were there more?

A. There were two hundred dollar bills and about fourteen singles. I gave him about sixty dollars to make the bets—I was drinking very heavily, and I do not recall exactly the figure, but I gave him about sixty dollars to make bets that day, and it was worked on a flim-flam proposition, I mean it wasn't the kind where you back your own selections on the horses. He came to me, he was an original bookmaker—a party came to me that I had seen several times before making bets and telling me that there was such a thing as betting the horses, and he gave me this, what they call an envelope, and he says, "This is a scheme where you can't lose. It tells right on here that on a two-dollar original investment you can get $577 in winnings." This party I found out later to be Jack Katz.

The Court: What?

The Witness: The runner for the bookmaker, I found out later he was Jack Katz I didn't know his name, I had no idea of his name.

Q. You say he was acting as a runner?

A. He was acting as a runner for the bookmaker.

[fol. 407] Q. That is the Jack Katz that was on the witness stand?

A. That is the Jack Katz that was on the witness stand in the case. I didn't know his name at the time, I had no idea of his name, only I knew he was a bettor, I thought he was a bettor with Harry, the bookmaker. He showed me this slip and told me what an investment would mean.

Q. Katz told you that?

A. Katz told me, and he went down to a telephone and called up, he told me at the time "I will get some information on the horse," he said. He said, "The first race goes off at two o'clock and I will get you the right information in about five minutes to two." He went down to a telephone and came back, and when he came back he said, "I have got the information. How much do you bet?" I gave him the first time twenty dollars, with the guarantee that if the horse lost I would get my money back. He placed the bet

and came back afterwards and told me that the horse had won. He didn't tell me what horse it was, and I never knew what horse I was playing. This information I got after I was arrested by a party that had dealt in this line of work, it is what they call a flim-flam, it is known in the horse-racing game as a flim-flam.

He paid me off that afternoon in the counterfeit bills for the $60 cash that I gave him. He gave me $212, I think, I do not remember the exact amount that he gave me, but I bet back and forth several times altogether. Then he would not change the one hundred dollar bill when I asked him to.

[fol. 408] Q. That was the time and the person from whom you got these two $100 bills, one of which you gave to Mrs. Goldstein, and one of which you gave to the tailor?

A. That is right.

Q. As I understand it, at the time you passed these hundred dollar bills you thought they were perfectly good?

A. I did.

Q. The one to the tailor you have made good?

A. Yes.

The Court: Through your wife, who has testified here?

The Witness: Yes.

Q. How about the other?

A. I have not as yet.

Q. You told her at the time you would make good?

A. I did.

Q. Her losses?

A. Yes.

Q. Do you know Mr. Berger?

A. I do.

Q. Who was on the witness stand just before you?

A. I do.

Q. How long have you known him?

A. About three and a half years.

Q. Now, it has been testified here that Mr. Berger introduced you to Katz in this apartment up on West 57th Street. Mr. Berger has testified that he never introduced you to Katz——

A. That is true.

Q. In this apartment. Who is telling the truth as far as you are concerned?

A. Mr. Berger is telling the truth there, because I was [fol. 409] never in any apartment, to my recollection, on 57th Street. I had never known about any party connected with this case until Mr. Berger was arrested on the 6th of February. I knew him, and the other people. I had never seen until I was brought into this trial two weeks ago, I think two weeks ago on Monday.

Q. Now, the defendant Rice, do you know him at all?

A. I had never seen him in my life.

Q. Never?

A. Never saw him before I came into this case.

Q. How about these ladies who were seated at the table?

A. I had never seen any of them.

Q. Did you ever see any of them at that apartment?

A. No, not in that apartment. I have seen one of the girls as Mr. Berger's friend coming into his real estate office in Long Island.

Q. At least, you never saw any of them in the apartment?

A. Never, sir, in the apartment.

Q. You never were introduced by Berger to Katz over in any apartment?

A. Never.

Q. You never saw Katz hand Berger four $100 bills and then Berger in turn hand the bills over to you?

A. Never.

Q. Then both of you go in the bath room and come out, and Berger hand Katz seventy-five or one hundred dollars, whatever it was, for those bills?

A. Never.

Q. You were never present during any such operation as that?

A. Never.

Mr. Crooks: Your witness.

[fol. 410] Cross-examination.

By Mr. Singer:

Q. Jones, if I understand you correctly, you made a bet with a man named Harry, a bookmaker, on a Thursday, January 14th, and won two hundred and some-odd dollars, and you got two counterfeit hundred dollar bills, or two

$100 bills, you do not know whether they were good or counterfeit, and then you passed them and that is why you are here?

A. That is right.

Q. It was this man Harry that gave you the bills?

A. No, Katz gave me the bills; he was a runner.

Q. You said before Harry gave you the bills.

A. I didn't say——

Q. You say you didn't say that?

A. I didn't say Harry gave me the bills; Katz was paying off money for Harry.

Q. Did you or did you not say that Harry gave you the bills?

A. I never said that Harry gave me the bills.

Mr. Singer: May I have the testimony re-read on that point?

The Court: The jury heard it; I think they can remember. If the jury want it read, they can ask to have it read at any time. We do not want to keep going back.

Q. Jones, how much money did you have when you started in playing the horses that day?

A. I took $90 out of my house.

[fol. 411] Q. You had this $90 in that bank book you were flashing before?

A. No.

Q. You had some bank book, and you said you drew some money out of the bank?

A. No, I didn't say that; I said that I took $90 from my home.

Q. What were you showing us the book for?

A. I had an account in that bank.

Q. What were you showing me that book for? You said you withdrew $90 from your wife's account, and you wanted to get it back in the bank before she found out?

A. I did not say that; I said I took the money from my home.

Q. And you went to the bank?

A. I took the money from my home.

Q. Why did you go to the bank?

A. I didn't go to the bank. I went to the bank on Thursday to cash this bill.

Q. So you could put the $90 back into the house?

A. Yes, that is right.

Q. That is right. As a matter of fact, you got the $90 so that you could buy the four counterfeit bills, did you not?

A. No.

Q. That you paid $25 apiece for?

A. No.

Q. You know that is a fact, isn't it, that is why you took the $90?

A. That is not a fact.

Q. That is why you wanted to get back to the house, so that your wife would not find out that you took $90 of her money to buy counterfeit money with?

A. No, that is not so.

Q. You had $90 in the morning, and you won two hundred and some-odd dollars; that would give you about $300?

A. No, I bet $60 to win that money. It cost me $60 in [fol. 412] bets to win the money, and after I changed the bill I bet back at least $70 the same afternoon.

Q. All right. If what you say is true, it cost you $60 to win $211, is that right?

A. About $211.

Q. Make it $211, is that right?

A. Something like that.

Q. All right. That means that you had $40 left, or $30 left, of your original $90; that is right, isn't it?

A. Yes.

Q. If you lost $60 of it winning the money, you had $30 left, is that right?

A. That is right.

Q. You said you bet seventy after you collected the money?

A. No, not immediately after. I bet money after I changed the bill in the afternoon.

Q. Get this now; you collected $211?

A. Yes.

Q. You had thirty, that is two hundred and forty-one. You bet seventy, that would leave you about $171. Where did you get the two $100 bills?

A. I didn't bet that money at the same time, Mr. Singer. I bet the money in the afternoon.

Q. Did you tell Mr. Katz when you saw him the first time when he was asking you about the passing of the hundred dollar bill on Goldie Goldstein that you had only won $146?

A. No, Kett never asked me how much I had won.

Q. And you never told him?

A. I didn't tell him.

Q. Mr. Kett was lying about it, I suppose.

[fol. 413] Mr. Crooks: If your Honor please, I object to that.

The Court: Yes, strike it out.

Q. I am reading from your statement which appears as Government's Exhibit 3 in evidence: "Do you recall that he interviewed you about either 4:50 or 4:30 Friday afternoon, January 5th, in your home at 4825 Forty-fifth Street, Woodside, and interrogated you concerning the passing of the counterfeit bill on Mrs. Goldstein, at which time you admitted that you had given her a hundred dollar bill, and that you had received said hundred dollar bill from a bookmaker known to you by the name of Harry, and that he had paid you off Wednesday evening, January 4th," and then a pencil line drawn through and marked "Thursday," "in the vicinity of 43rd Street and Broadway, and handed you a roll of money on the street, and upon examining it a short distance away you discovered that he had given you approximately $143, among which was the hundred dollar bill you had given Mrs. Goldstein; am I correct in so stating?" And you made the answer, "Yes." Is that right, did you make that answer to that question?

A. No, I think there is more to it. Read the other paragraph. I think there was an explanation.

Q. I am asking you whether you said that.

A. You want to ask me how I come to make that statement?

[fol. 414] Q. I didn't ask you that, I didn't ask you any such question.

A. I can tell you——

Mr. Crooks: I object.

Q. Will you answer the question?

The Court: He asked you a question.

Q. Did you make that answer to that question?

A. I did at that time.

Q. "Q. At that time I told you that I wanted the absolute truth, and interrogated you minutely as to the horses you had played and amounts placed and the amount of money that you received from the alleged bookmaker named Harry, and you insisted that the $143 was all that you had received from him. Am I correct in so stating? A. Yes." Did you say that?

A. I did at that time, yes.

Q. Now, when you say you did at that time, do you say now you made a different statement later?

A. I say that Mr. Katz told me what to say in that statement.

Q. Mr. Katz told you what to say?

A. He dictated that statement and tore up three papers he made that he had written on.

Q. As a matter of fact, let us start out again. You had $211; how much more did you have, $30? It was $241 that you had when you left the bookmaker.

A. When I left the bookmaker.

Q. You were drinking very heavy, you say?

[fol. 415] A. I was.

Q. And you were walking around, and you do not know exactly where you might have been or what you might have spent?

A. That is true.

Q. But you got the money about 1:30?

A. A little later than that.

Q. About quarter to two?

A. No, it was after two.

Q. And you took your usual taxicab over to Woodside, Long Island?

A. No, I took the subway.

Q. Did you? Then you didn't take a taxi?

A. No.

Q. Usually you took a taxi?

A. Not usually.

Q. Don't you think you said that you usually took a taxi?

A. I did not, no.

Q. You mean you never told that?

A. Yes, sir.

Q. That you usually took a taxi?

A. Yes, sir.

Q. As a matter of fact, in order for you to bet $90 on the horses, you had to steal the money from your wife, so she wouldn't know it?

A. Not steal it.

Q. Not steal it, but take it and put it back so she wouldn't know about it?

A. That is right.

Q. You didn't have $90 of your own?

A. I did.

Q. Why didn't you use your own money?

A. This money was my own.

Q. Why didn't you take it from your wife?

A. It was money given to my wife by me.

[fol. 416] Q. Why didn't you use your own money?

A. My money was in the bank.

Q. Why didn't you go to the bank and take it out of the bank instead of stealing your wife's money?

A. I did not go to the bank, and I did not take the money that afternoon.

Q. You did take your wife's money?

A. I did take it, and I put it back.

Q. You rode in the subway over to Woodside. When you got to Woodside you felt, "well, I would like to have a suit of clothes, but the bank is closed, and I cannot cash the one hundred dollar bill, so we will go and see if we can get suit of clothes," is that right?

A. No, that is not right.

Q. Let us put it another way. When you got to Woodside you felt like cashing the one hundred dollar — to get $90 back in the house before your found out you had taken the money?

A. That is right.

Q. And you went to the bank and the bank was closed, is that right?

A. That is right.

Q. Which was pretty bad?

A. Well, it was——

Q. I mean, it didn't give you an opportunity to cash that hundred dollar bill?

A. That is right.

Q. Now, then, you figured out—did you have another couple of drinks over in Woodside?

A. I made several bets before.

Q. Where did you make those bets?

A. In the local bookmakers in Sunnyside.

[fol. 417] Q. You were traveling all around Sunnyside making some bets?

A. Not traveling around——

Q. Drifting around?

A. No, not drifting around. I live there; this is my immediate neighborhood.

Q. You bet about $70?

A. Close to $70; I do not remember exactly.

Q. If you can tell me, how can you take $70 from $241 and leave you with two $100 bills? Can you tell me? I want to know how you could do that?

A. No, you do not get that right, Mr. Singer. The bets I made on the hockey game was after I bought the suit.

Q. You said just now that you bet about $70 out in Sunnyside?

A. I did at that time.

Q. You want to change your mind about that now, do you?

A. It is not changing my mind.

Q. How much did you bet around Sunnyside?

A. I do not recall; I was drunk at the time that *that* I did it.

Q. You were so drunk that you did not know whether you got $143 or $211?

A. I know how much I got.

Q. Now you know that you got $211, but when you talked to Agent Kett you told him you only got $143?

A. No, I didn't say that. He didn't ask me that, no.

Q. You answered his question?

A. Yes. I will tell you how I made the statement. Mr. Kett made that statement, I did not.

Q. I ask you——

A. And I did not sign it in his presence.

Q. Will you listen to me, please? I asked you whether you made that answer and you said "Yes." Now do you [fol. 418] want to say you didn't make that answer, you didn't say "Yes?"

A. I did at that time say "Yes."

Q. All right. Now, then, you told Mr. Kett—oh, I will withdraw that. You misinformed Mr. Kett, shall I put it that way, regarding the true situation? You had won $211 but rather than give the complete information you told Mr. Kett you only won $143, isn't that right?

A. I didn't tell Mr. Kett at that time how much I had won; he didn't ask me, and I didn't tell him.

Q. But in answering the question you had told him?

A. At the time I made the statement, I think it was three days later, on the following Monday.

Q. Then you gave him misinformation on Monday if you didn't give it to him on Friday, you pick your own time.

A. I made the statement and he wrote it. I told him the figures in there were wrong, and he asked the stenographer if she had changed the figures. Mr. Johnson, who was a Secret Service man, was there, he said, "This statement means nothing, and I have lost too much time, and have written it out three times already, and we have spent about three hours getting it in there, and he would not change it for me."

Q. The fact of the matter is that the statement is wrong?

A. The statement is wrong.

Q. And when you signed it you told him it was wrong?

A. I told him it was wrong, and he said, "There is noth-
[fol. 419] ing in there to convict you on. Let it go as it is," and then I was brought to Brooklyn.

Q. And when you came to Brooklyn you were arraigned before the United States Commissioner?

A. I was.

Q. You bought this suit at 3:30, and of course you had two $100 — when you bought the suit?

A. That is correct.

Q. And you still had two $100 bills when you bought the suit?

A. That is correct.

Q. And you certainly had some change of the other $41?

A. I had about $17 or $18, whatever I had when I came back there.

Q. Let us go along and take it easy. You say you had seventeen or eighteen dollars, so if that is so you had only bet about $22 out there at Woodside, or $23?

A. I do not recall how much I bet.

Q. You make bets very fast after the banks close at three o'clock?

A. I had won the money.

Q. I am asking you the question: You got back to Woodside at three o'clock?

A. Three o'clock, that is right.

Q. And you made several bets and had a couple of drinks, all in a half an hour, and you would up at the clothing store at 3:30, pretty fast work for a drunken man?

A. It was not 3:30; you are mistaken about that.

Q. Let us go back a minute. You have to place a bet before the race starts, do you not?

A. Correct.

Q. As a matter of fact, you know all books close at least eight minutes before the track, before the race starts, do [fol. 420] you not?

A. No; they will give you time up until one minute ahead of the track.

Q. And he pays you off after the race is run?

A. He will pay you off after the race if you have won.

Q. How long does it take for a race to be confirmed from the track?

A. About six minutes, five or six minutes.

Q. You made a couple of bets with a couple of bookmakers. What were they, all standing together, and you placed bets with each one of them?

A. No, it was only one bookmaker.

Q. Now you say it is only one bookmaker. You said before it was a couple of bookmakers.

A. Katz was a runner for a bookmaker.

Q. I don't care whether he is a runner or whatever he is; you said before you made a couple of bets with bookmakers, is that what you said, or do you want to change that now?

A. Are you speaking about New York or Sunnyside?

Q. I am talking about Sunnyside, local bookmakers that you said you had placed bets with.

A. There are several men that you can place bets with out here, local bookmakers.

Q. My friend, I am asking you——?

A. They work together, they are local bookmakers.

Q. I do not care whether they work together or separately, what I want to know is now, you claim that you bet with a single bookmaker or more than one that afternoon?

A. They have a room.

[fol. 421] Q. Oh, now you are in a pool room, it wasn't a bookmaker, like it was before out on the street?

A. This is Woodside. They have a room where you place your bets.

Q. Let us lay that to one side. By 3:30, at any rate, you reached this clothing shop, is that right?

A. Not 3:30.

Q. Was it six o'clock?

A. No, the first time it was around 3:30, I was back there at six o'clock.

Q. But it wasn't six o'clock when you went there the first time?

A. No.

Q. You bought yourself a suit of clothes on the profits of the winnings of the day?

A. That is right.

Q. And you got $75 or seventy-odd dollars in change from this man Berger, not the defendant, but the other man?

A. Yes, sir.

Q. And of course you then went right home and stuck that $75 and the other $17 which you had, which would be $92, back so that your wife would not know you had taken the $90 from her?

A. That is right.

Q. You did that?

A. Yes.

Q. You went back to do that?

A. I put the $90 in my house that night before seven o'clock.

Q. Now, as a matter of fact, that left you with how much money in your pocket?

A. A hundred and some-odd two or three dollars, I do not recall how much.

Q. Yes, that is right. Now, then, you came back to New York?

A. I did.

[fol. 422] Q. And you said before you made a bet of about thirty or forty dollars on the hockey game?

A. It was in the afternoon that I made that.

Q. You can't bet on a hockey game in the afternoon, can you?

A. You can bet at any time of day on a hockey game.

Q. I thought you told me you went to the hockey game that night and made a bet over there?

A. I did not make a bet at the hockey game, not at Madison Square Garden.

Q. You bet before you went there?

A. I bet in the afternoon before I went there.

Q. You had $103. Did you go to the hockey game with one hundred and two or one hundred and three dollars?

A. I did.

Q. Or $101?

A. No; I had more than that, I had one hundred and five or one hundred and six dollars.

Q. And you had the $90 home?

A. I did.

Q. So you say now, although, of course, you didn't tell that to Mr. Kett, did you,——

A. I do not recall; perhaps I did.

Q. (Continuing:). The fact of the matter is, you were asked by Mr. Kett, were you asked the following questions and did you give the following answers: "Q. As a matter of fact, from the passing of these two counterfeit one hundred dollar bills, you received approximately $170, and at the time of your arrest you only had $11 on your person. What became of the $170? A. Most of it went on the horses, [fol. 423] with the exception of the $40 I left in the house, which I gave my landlord." You didn't say anything about leaving $90 in the house?

A. The ninety was the original money I took from the house that I had to give back.

Q. "Q. So besides the $90 you left at home you left $40 at home? A. I didn't leave it at home; I gave it to my landlord, I think. We had a lease there. Q. You said before that you left this $40 there for rent money on Thursday afternoon before going over to see Goldie Goldstein. Now, which is correct, did you leave it there on Thursday or Friday? A. I must have left it there either Thursday or Friday. I played the horses, and although my intentions were to give it to my wife, I threw it away." Did you make that answer?

A. I did.

Q. If you threw it away, how did you leave it at home, or was that some more money? Just tell us whatever you feel like about it?

A. No, the $40 that I left there was on Friday, after I had passed the $100 to Mrs. Goldstein, I had given her $100 the previous night.

Q. You said to Kett that you left it there before you saw Goldie Goldstein?

A. I did not.

Q. Mr. Kett asked you this question: "Q. How could you leave it there on Friday morning when you left the house with the money and there was nobody there?"——

A. I didn't leave the house Friday morning.

Q. And you answered, "I do not recall the time; I left it in a jewelry drawer." Now you say you gave it to the landlord. Which is it?

[fol. 424] A. I gave it to the landlord on the following day, not at that particular time.

Q. Are you just telling me now these stories, or don't you want to tell me about that money?

A. This is not a story.

Q. Of course, if you are just going——

The Court: Do not argue, Mr. Singer.

The Witness: It is not a story.

The Court: Now, wait a minute. Wait. There is no question for you to answer. Ask him a question.

Q. Were you asked this question: "Q. Whom did you receive these two $100 bills from? And did you answer, 'from a bookmaker by the name of Harry.' Q. Can you pick him out on the street? A. I can pick him up any day. Q. When did you make this money? A. Between the two days I made the money, on Wednesday or Thursday; I make money at bets right along. Q. How much did he pay you Thursday? A. $236." Now, didn't you say there that you got this money from Harry?

A. On Thursday?

Q. Yes. That wasn't Jack Katz, was it?

A. No.

Q. Now you have changed that story, have you?

A. I have not, Mr. Singer.

[fol. 425] Q. And now you are trying to tell us, and you are trying to tell this jury, that as a matter of fact Harry

didn't give you the money, but that the money was handed to you by Katz, isn't that it?

A. At that time I told him that this runner, whom I had never seen before, I had only known him in business, had handed me the money.

Q. The man that you describe as Harry is this man 5 foot 6 or 7, Greek or Italian, dark. Look at Harry Katz; is he 5 foot 7, is he 170 or 165 pounds, does he look Greek or Italian to you? Now, you know, don't you——

Mr. Crooks: I object to that.

Q. (Continuing:) —that you are deliberately changing your story?

The Court: Let him answer.

Q. I am not changing the story because at that time——

The Court: Just answer the questions. We will save time.

A. He doesn't look it.

Q. And therefore if you told the truth then, that the man who gave you the money was 5 foot 6 or 7, and described otherwise as we have just related, and as you related to Mr. Kett, you were telling an untruth, or you are now telling [fol. 426] an untruth when you say you got the money from Katz; which of the two do you want to stand by, you got it from Harry, who was 5 foot 7, or you got it from Harry, who is about 5 foot 2, just tell me which one?

A. The money came from Harry, that I am positive of; he was the senior bookmaker.

Q. Did you mention to Mr. Kett or to anybody at that time that Harry was the senior bookmaker, that there was more than one bookmaker there?

A. I told Mr. Kett that there were several people around there. He had runners, but that I couldn't describe them.

Q. Did you tell Mr. Kett, you signed a statement, and in that statement did you make any statement that there were two bookmakers there and not one?

A. I told him there were several people around making bets and runners at the time.

Q. You told him that you could pick the man out that gave you the money?

A. I could pick out that man Harry very easily.

Q. The man that gave you the money, you could pick him out?

A. I did.

Q. Now you say Katz gave you the money, that Harry didn't give you the money——

Mr. Crook: I object to that.

The Court: No, ask questions.

Q. If Katz gave you the money how could you pick Harry out as the man who gave you the money?

A. Because he was the original bookmaker, he was the senior member.

[fol. 427] Q. Of the firm of bookmakers of Harry & Katz, Inc.?

A. There were three or four runners.

Q. Let us move to something else; we are getting dizzy with this. Let me see whether I know, I want to make sure about this bet at the hockey game. Do I understand you to say that you bet—now do I understand you to say that before you left New York you made the bet on the hockey game, that is to say, when you left New York to come to Woodside to buy the suit or go to the bank or give your wife the money back, whichever it was, you made that bet before you did that, the bet on the hockey game?

A. No, the bets were made in Woodside, Long Island, Sunnyside.

Q. You bet on the hockey game at Sunnyside?

A. That is right.

Q. Before you went to Mr. Berger's shop to buy the suit of clothes and change the $100 or after?

A. After.

Q. After?

A. I think between the time I was there first and the time that I went back there again.

Q. My dear sir, will you tell me this, and I wish you would: When you went into Berger's store—now, if I am wrong I want you to correct me because seriously I want to see what it is all about—when you went into Berger's store you say you had $211, or am I unfair? Do you say you didn't say that?

A. No, I didn't say that.

Q. $217.

A. Around that, something like that; I do not remember how much.

[fol. 428] Q. You cashed a hundred dollar bill, is that right?

A. That is right.

Q. You went out and you placed, you made some bets on the races and you lost?

A. No, I won a couple of bets that afternoon, possibly four or five dollars, but I bet quite heavily to win that, because I am loser in the long run.

Q. When you bet you had to put up money?

A. You put up money, yes.

Q. And then you got back your money and whatever money you won?

A. That is it.

Q. You got seventy-odd dollars from Mr. Berger?

A. $75.

Q. You had $17——

Mr. Wegman: If your Honor please, I do not want to interrupt, but you keep calling this man Berger.

Mr. Singer: It is not the defendant Berger we are talking about. We are talking about the man in the clothing store.

The Court: Start the question over.

Q. When you got $75 or $73 from Berger, you had $17 in cash, which would make it $90. Now, you say you went out and won $5 playing the horses?

A. Something, I do not remember how much.

Q. Come on and remember, will you?

A. I cannot remember it; how can I remember things when I was in a state of intoxication?

Q. It wasn't thirty or forty that you won——

[fol. 429] The Court: Wait a moment.

The Witness: I was in a state of intoxication.

Q. You didn't win thirty——

Mr. Crooks: I object.

A. I do not remember those figures.

Mr. Crooks: I object to asking two or three questions without permitting him to answer one.

The Court: All right, he has asked one question; if the witness would just try to answer the questions we would get along better, but every time there is an explanation. If he would answer yes or no, how much and when, we will get along a lot faster.

The Witness: Yes, sir.

Q. Now again——

The Court: Ask the question.

Q. Again did you win thirty or forty dollars, or was it five or six dollars?

A. I do not remember.

Q. You said before it was five or six dollars.

A. I do not remember the amount of money.

Q. Then you misled me before. Take it easy. You misled me when you said five or six dollars?

[fol. 430] A. I do not remember how much.

Q. Oh, do you think I could be easily misled, so you can tell me anything?

A. Oh, no, I do not think you could be.

Q. Weren't you trying to mislead me, were you trying to mislead these gentlemen here?

A. I was not.

Q. You do not remember what you won at all?

A. I do not.

Q. What do you remember? See if you remember anything. You didn't know what happened at all?

A. That afternoon I do not remember.

Q. You do not know what happened at all?

A. I do know what happened.

Q. Your last answer was you didn't remember what happened.

A. That particular afternoon I do not remember how much money I won. I know where I went, but I do not remember how much money I won.

Q. You had $73 from Berger in the clothing store?

A. $75, I think it was.

Q. $75; you said you bought a suit, and didn't you say you bought a shirt?

A. I did buy a shirt; I didn't say it before, but I recall now that I did.

Q. That is right. So you had $73?

A. That is right.

Q. You had $17 that you had in your pocket above the $200 that you got from New York, that you came over from New York with. That is $73 and $17, $90. Now, you say [fol. 431] you won some money betting on the horses, but you said before it was five or six dollars, and now you say you can't remember. Now, then, you say before you left there to go back to New York, you bet $30 on the hockey game, is that right?

A. Something like that; I do not remember how much.

Q. Come on, you said $30 before.

A. I do not remember how much I bet, Mr. Singer.

Q. And still you brought $90 home out of the $90. Explain to me how you could spend $30 and still bring $90 home; that is your theory now.

A. I must have winned the money in the afternoon.

Q. You must have won the money, or you must have cashed another hundred dollar bill?

A. No, I did not. I do not remember.

Q. As a matter of fact, you know very well you never brought that $90 home to your wife?

A. I did. Mr. Berger got the $90 for the suit.

Q. Mr. Berger got $90 from the bill you passed on Goldie Goldstein that night?

A. I beg your pardon. My wife gave him that $90 which was in the drawer for that suit, $75 from the original $90.

Q. Do you remember being questioned in the District Attorney's office at all?

A. No, not a word.

Q. I think Mr. Cowin was going to handle your case.

A. I was brought before him.

Q. When you were first arrested your case just involved you alone, isn't that right?

A. Yes, sir, that is right.

Q. Then later you were indicted with other people, is that right, in connection with the same two counterfeit [fol. 432] notes?

A. That is right.

Q. When you were indicted and arraigned in this court with these other people you knew that you and these other people were charged together with passing counterfeit money?

A. I did.

Q. Now, you knew that you had already insisted that you had gotten this money from a bookmaker named Harry?

A. That is right.

Q. And you knew that you had told the United States Attorney, and incidentally the Grand Jury, that the man named Harry had given you this money?

A. That is right.

Q. You stood up in court, and you saw a man arraigned here by the name of Katz; his case was called when you were there; did you ever inform either the District Attorney or the Secret Service or anybody else connected with the Government that you had finally found that man that gave you those counterfeit bills?

A. I did not.

Q. When, as a matter of fact, you had offered to find that man at any time?

A. I was never given the opportunity.

Q. Well, who stopped you during the time when you were out on bail from finding this man?

A. It was never brought up at the time.

Q. I ask you whether you were not given the opportunity. Were there any ropes or fences of any kind? Were there any anchors put on you to keep you from going out to find him?

A. I looked, I went to the station house.

[fol. 433] Q. Was there anything before this Court that would stop you from saying to the Judge, "Your Honor, there is the man I got the bills from"?

A. What good would that do? I was on trial.

Q. You weren't on trial at that time, you were called to court to answer a charge of passing counterfeit money.

A. There was no use my saying that then.

Q. You said that you got it from some mythical person Harry.

A. I didn't say Harry; I said other people connected with him.

Q. Now you say he had other people, but before, as a matter of fact, you never said anything about that. Now, Mr. Jones as a matter of fact, isn't this defense concocted to turn out this defendant Berger, who is your friend?

A. It is not.

Mr. Wegman: I object to that.

The Court: The question is answered.

Q. As a matter of fact, aren't you on the witness stand to do whatever you can to help your friend?

A. I am not; I am here to help myself.

Q. And incidentally, Mr. Jones, to help do whatever you can to help your friend?

A. No, I am not.

Q. You mean to say right now that when you were describing this man Harry, that you didn't have in your mind the picture of the man who actually gave you the bill?

A. I did not. There is a party sitting in the court room now that resembles him a lot.

[fol. 434] Q. You say there is a man in the court room now who gave you the bills?

A. No; he did not give me the bills.

Q. Come on down here and let us get a look at him.

A. He isn't here——

Mr. Crooks: I object.

The Court: Wait a minute. If there is a man in the court room here that gave him the bills, let us locate him.

The Witness: I said he resembled the party that gave them to me, he looked like the party, but I said that to show the contrast between Mr. Berger and him.

Q. Let us check up this man that you described, height 5 foot 7½, weight about 180 pounds or so,——

A. But he was a distinctive type, he was distinct from this fellow here, he was a Spanish, Latin type.

Q. That is very important. Do you think you could ever figure out this money proposition, how much money you had and how much you didn't have that day?

A. I doubt it very much; the exact amounts I do not think I could recall, the amounts of money that I spent, because I was on a drunk, I had been drunk from the first of the year and I was in a fix, I could not tell my wife that I bet money on horses because she had forbid me to do it.

Q. You were used to cribbing it from your house when your wife wouldn't know it?

A. Not cribbing.

[fol. 435] Q. Not cribbing, stealing it then?

A. No, not stealing.

Q. Taking it from her when she wouldn't know about it and then trying to sneak it back before she found out?

A. I was in a position to make good at any time.

Q. You were?

A. I was.

Q. That is why you carried that bank book with you and brought it to court today, is it?

A. No; I always carry it.

Q. So you had money of your own at that time to bet on horses?

A. Yes, sir.

Q. You had money before that?

A. Always.

Q. You have money always?

A. I have it in my pocket and I always carry my bank book.

Q. You always carry your bank book?

A. Yes.

Q. You have got that bank book here to show that you had a bank account?

A. Not necessarily.

Q. You haven't got it here to show you had enough money to get that $90 back to your wife that day, have you?

A. I had enough to do it.

Q. Why did you say to Mr. Kett that you threw $40 away instead of leaving it at home with your wife, as you originally intended?

A. I just said I didn't want my wife to know I was betting on horses.

Q. You know that doesn't answer my question.

A. It does answer it.

Q. You know that that doesn't answer my question. Why did you tell Kett that you intended to leave $40 at home, [fol. 436] but that you had gone out and thrown it away? By throwing it away I assume you meant betting on horses?

A. Betting on horses.

Q. Why did you tell that to Kett? Did you think that Kett was going to go and tell your wife about it?

A. At that time I didn't want my wife to know that I was betting on horses.

Q. Now, as a matter of fact, what happened was this, was it not? When Agent Kett called to see you the first time, all that Kett knew about it was the passing of the hundred dollar bill over at Goldie Goldstein's?

A. That is right.

Q. You didn't tell him you had passed another hundred dollar bill?

A. I did not.

Q. And you know very well he asked you whether you had passed another hundred dollar bill?

A. He did not ask me how much money I won.

Q. I didn't ask you that. Why don't you answer my questions?

A. I am sorry.

Q. Bear in mind, all I am trying to do is find out what you know about this.

The Court: Ask him a question.

Q. Did you tell Kett that you had passed another hundred dollar bill?

A. I did not.

Q. Why didn't you tell him that you had?

A. He didn't ask me, and besides, I thought the bill was perfectly good.

Q. In other words, you thought it was none of his business?

A. All right.

Q. He didn't ask you and you thought it was none of his business?

A. Naturally.

[fol. 437] Q. But you knew that he was a Secret Service man?

A. Again the question, please?

Q. I ask you, you knew he was a Secret Service man?

A. I did.

Q. He told you the bill you had stuck Goldie Goldstein with was a counterfeit?

A. He said Goldie Goldstein had stuck me with it, not that I had stuck her.

Q. I do not mean the exact words, but that was the same deal?

A. It was the same deal?

Q. Is it your argument now——

A. It is not my argument——

Q. Wait a minute; let me finish—that you never passed these counterfeit bills, that you thought that the bills that Harry, the bookmaker, or Katz gave to you, were genuine,

but that Goldie Goldstein was trying to slip one over on you by putting a phoney bill in?

A. At that time I did think so.

Q. You did not think that this man Berger, the man that you bought the suit of clothes from and that you got $75 change from, you didn't think he was putting a fast one over on you, to put you in a fix?

A. I did.

Q. But anyway, whatever the reason may be, you did not tell Kett that you had passed another hundred dollar bill?

A. I did not.

Q. You found, though, you knew that you had gotten two $100 bills from a certain person, be he whoever you say he is, and that one of them already turned out to be counterfeit, isn't that right?

A. That is right.

[fol. 438] Q. You did not tell it to Kett?

A. That is right.

Q. Kett, under those circumstances, with only one bill involved, said to you, did he not, "Now, if you find this man, I am going to give you my address or my telephone number; you call me up;" isn't that correct?

A. That is right.

Q. And lo and behold, now Kett found you in the station house as a result of having passed another bill before you ever spoke to him?

A. That is right.

Q. It wasn't because you were afraid of what would happen with that other hundred dollar bill that you didn't tell Kett about it?

A. No; I thought the bill was perfectly good; I was quite sure that Mr. Berger had taken it to the bank.

Q. You have been trying to say something and I want to give you the opportunity of saying it about this statement. Is it your contention that this statement does not reflect what you actually said at the time you were down in the Secret Service office?

A. The amounts of money are not right.

Q. The other items in there are truthful?

A. Most of them.

Q. Suppose we take it this way, and you are entitled to this, I think: The first question is: "I now warn you, Edward Jones of your constitutional rights, in other words,

that you do not have to say anything unless you voluntarily wish to do so. Furthermore, I warn you that anything you do say may be used against you in subsequent criminal [fol. 439] proceeding-. And being fully aware of that, you voluntarily wish to make a thorough statement of your knowledge concerning the passing by you of two counterfeit hundred dollar Federal Reserve Bank notes, no duress or threats or any promises having been made to you," and you answered, "Yes;" is that correct? Taking that statement word for word, is that statement correct?

A. That particular statement, no, it isn't.

Q. The whole thing starts out lying right away?

A. No.

Q. In other words, where was the lie, that duress or threats had been made to you, that is what you mean?

A. That is what I am referring to.

Q. In other words, you want to tell a story now, although you didn't before in your direct examination, that somebody slapped you around?

A. I told that to the Grand Jury.

Q. You want to tell us that?

A. Yes.

Q. You want to tell us you were slapped around at the time when Kett made you sign this statement?

A. No.

Q. You want to tell us because you know you couldn't say that, because you say that Kett left before you signed the statement?

A. That is right.

Q. So that wouldn't work out so well?

A. That is right.

Q. So the fact of the matter is the only time that Kett could have hit you was in the police station Saturday night?

A. That is right.

[fol. 440] Q. And of course you were so afraid of what he did to you Saturday night, that you still felt sore about it on Monday morning, and you were willing to sign anything he said?

A. Not anything, no, I wouldn't say that.

Q. You were careful not to cross him?

A. That is right.

Q. Why, he beat you unmercifully?

A. No, I wouldn't say that.

Q. He attacked you with a rubber hose?

A. No.

Q. Tied your arms and hit you with a brick bat or did he just reach over and smack you across the face?

A. A good one.

Q. Probably you were entitled to it?

A. I do not think so.

Q. You do not think so?

A. No one is entitled to it, no.

Q. You do not think that he had a right to hit you, owing to the fact that you had deliberately misled him about an investigation that he was conducting, and that right after he was good enough to let you go, that he did find ont that you passed another counterfeit bill? You think that you were not entitled to anything at all?

A. No.

Q. You are right, you are right, he shouldn't have hit you. You didn't complain to the District Attorney that you were struck?

A. I didn't say—what was that?

Q. You can hear me, can't you?

A. Yes.

[fol. 441] Q. You want to answer me when it pleases you. I say answer me when it doesn't please you. Did you report to the District Attorney that anybody had struck you?

A. No.

Q. Now, you weren't afraid of Kett over in the District Attorney's office, because you already told me that there was a man by the name of Johnson that brought you over, and that Kett did not come?

A. That is right.

Q. So it wasn't fear of anybody that kept you from telling the District Attorney?

A. That is right.

Q. Now, you were arraigned before a United States Commissioner, and you didn't say a word to the United States Commissioner about anybody beating you?

A. No.

Q. Now, you wish to make a lie out of this whole statement, don't you? You say it is a lie?

A. Not all of it, no.

Q. Only a portion of it?

A. Only the amounts of money spent, I asked him to change it.

Q. You can't correct the amounts of money spent because you say now——

A. I can't correct——

Q. One minute. Will you listen to me, please, because you say now you were so drunk you do not know how much you won, lost or had?

A. That is right.

Q. Then you do not know whether this is the truth or not?

A. I do not recall any parts of it that I made at the time; I do not remember. If you read them to me I could [fol. 442] possibly recollect.

Q. You mean you were still drunk Monday morning when you got to the Secret Service office?

A. Almost, yes.

Q. You were all right Saturday night, you didn't get any liquor in the police station, did you?

A. I did.

Q. You did?

A. I did.

Q. How much did you get?

A. I got a bottle.

Q. You got a bottle of liquor?

A. A full bottle.

Q. Did you have that bottle with you all day Sunday?

A. All day Sunday.

Q. Where were you on Sunday night?

A. In Police Headquarters.

Q. Over in New York?

A. Yes.

Q. Did you take the bottle of whiskey to Police Headquarters?

A. No.

Q. Did you take it with you over in New York?

A. No.

Q. Of course, it is very easy for you to charge everybody in this case with——

Mr. Crooks: Ask questions; do not argue.

Q. As a matter of fact, you say now that some officer in the police station went out and got you a bottle of liquor?

A. That is right.
Q. Do you know his name?
A. I do not.
Q. How much did you pay him?
A. Two dollars.
[fol. 443] Q. How much did you give him for getting it for you?
A. Fifty cents.
Q. This was in the 110th Precinct?
A. Yes, sir, 108th.
Q. 108th Precinct?
A. Yes.
Q. And you kept that bottle all night?
A. I did.
Q. And you kept it all day Sunday?
A. All day Sunday.
Q. What was it, a quart.
A. A quart.
Q. You got a quart of liquor for two dollars?
A. Yes, sir.
Q. Do you mean that seriously?
A. I do.
Q. You drank it all by yourself, nobody else got into it?
A. I drank it all by myself.
Q. You lay in a drunken stupor all day Saturday and Sunday?
A. Yes, sir.
Q. So drunk you didn't know whether you were there or outside?
A. I didn't care, no, sir.
Q. As a matter of fact, you were drunk before Kett saw you, because you got the bottle before he saw you?
A. No.
Q. It was after Kett left you Saturday night that somebody gave you this bottle?
A. At two o'clock in the morning.
Q. They have all night service in that police station?
A. All night service.
Q. You also got a bottle when you got over to the United States Attorney's office, didn't you?
A. No, sir.
Q. Do you know whether you did or not?
A. I know I didn't.

[fol. 444] Q. Didn't the District Attorney offer you a drink right away?

A. No.

Q. Since you were under arrest by the United States Attorney's office you kept on getting bottles of whiskey?

A. No.

Q. You didn't get any over at detective headquarters?

A. I did not.

Q. You didn't get any in Police Headquarters Sunday night?

A. No.

Q. What time did you get to Police Headquarters Sunday night?

A. About eleven o'clock.

Q. When did you finish that bottle? About 10:30?

A. About 6 or 7.

Q. And you were asleep from 6 or 7 until they woke you up to bring you to Police Headquarters?

A. No, I was awake.

Q. Awake, but still under a drunken stupor?

A. Yes, sir.

Q. This seems kind of funny to you, doesn't it?

A. No, it is not funny, it is quite serious.

Q. It seems quite funny——

Mr. Crooks: I object to that.

Q. When you got over to Police Headquarters about eleven o'clock you didn't have that bottle with you any more?

A. No.

Q. You didn't get anything to drink over there?

A. No.

Q. In the line of liquor?

A. No, sir.

Q. Then you stayed there all night?

A. Yes.

[fol. 445] Q. Did you stay up all night or did you go to sleep?

A. I slept most of the night.

Q. You were pretty drunk?

A. Kind of.

Q. When you got up in the morning they took you to the line-up?

A. That is right.

Q. When you got to the Secret Service office it must have been about 11:30?

A. About ten o'clock, a little after ten.

Q. You are trying to tell us now, after you had been on a bat for some two or three weeks, over a month, as you say, that you were still drunk from the last drink you had taken at six o'clock on Sunday afternoon, you were still drunk Monday morning at eleven o'clock, when you started to make out a statement?

A. I would not say I was drunk.

Q. You said you were drunk.

Mr. Crooks: Your Honor, I object to that.

The Court: All right. Do not tell him what he said. Let us see what he said.

Q. You didn't report, did you, at the police line-up to the officers in charge that the Secret Service man had hit you?

A. I did not.

Q. As a matter of fact, until after your arraignment and until you had retained a lawyer to defend you, you had never mentioned a word to anybody officially connected with the Government or with the City Police that you had been struck by anybody?

A. I did not.

Q. It was after you first retained your counsel that you first told that to anybody?

[fol. 446] A. I didn't tell him.

Q. You even kept it a secret from him?

A. That is right.

Q. Of course, you told it to Mr. Crooks, didn't you?

A. I did not.

Q. You didn't tell it to him even?

A. No.

Q. You didn't trust anybody around?

A. I didn't think it was a necessary statement to make, until I was brought before the Grand Jury.

Q. But you were very anxious to make it when I was asking you about the statement, you were very anxious to tell the circumstances under which it was made?

A. No, that matter first came out in the Grand Jury room.

Q. I didn't ask you that. I said, you were very anxious, "Let me explain how that statement was made,"—didn't you say that?

A. No.

Q. You didn't tell me that?

A. No.

Q. You tell me now you did not?

A. I do not recall saying it.

Q. You do not recall saying it. You do not recall how much money you won either?

A. No.

Q. You do not recall now whether it was this Harry that you got the money from or Katz?

A. I do remember it was one of the runners.

Q. When you say that you asked Mr. Kett or Mr. Johnson when Mr. Kett left to change the amounts in the statement, what amounts did you want to be put in?

A. I do not recall the numbers, but it was not this here amount.

Q. What amounts did you want put in?

A. I do not remember, Mr. Singer.

Q. As a matter of fact, you didn't know how much you had to win in order to make your story sound right—— [fol. 447]. A. That isn't right.

Q. That is why you wanted it changed?

A. No.

Q. Because if you were to total your figures up you would see that your story was improbable, and that is why you wanted them to change it?

A. I do not recall the amounts.

Q. As a matter of fact, Jones, you have been convicted of crime, haven't you?

A. That isn't right; I was never convicted of anything.

Q. You were never convicted of anything?

A. No.

Q. You were convicted of criminal abandonment on July 2, 1926, and sentenced on July 14, 1926?

A. I was never convicted.

Q. To a term of imprisonment in the City Prison?

A. Never.

Q. You say no?

A. Never; never went to prison for that.

Q. Now, you are saying now you have never been convicted of any crime?

A. Yes.

Q. Do you say that you received a suspended sentence?

A. I was convicted of disorderly conduct.

Q. I mean aside from disorderly conduct; that is only an offense, not a crime; I mean the crime of abandonment?

A. Yes.

Q. You weren't convicted of abandonment, that was on July 18, 1923, and you received a suspended sentence, and once on June 2, 1926, on criminal abandonment, and on the 14th of that month you received a sentence of thirty days in the City Prison?

[fol. 448] A. I never received a sentence. I was sentenced by that Judge, but I never stayed in jail.

Q. You were convicted, but you didn't go to jail?

Mr. Crooks: He said he wasn't convicted and the attorney comes back and says that which is not true.

Mr. Singer: That is all right with me.

Mr. Crooks: All I want is for the witness to have a chance to answer Mr. Singer's question.

The Court: All right; I thought he answered it. I thought he said the charges are true. Is that what you said?

The Witness: The charges are true, but I never went to jail for them.

Q. You say you never went to jail?

A. I never stayed in jail for a day.

Q. That wasn't for abandonment of your present wife?

A. No.

Q. Could you tell me—incidentally, you have got no other means of support other than that store or luncheonette counter that you run, you did not have any?

A. I had no other means.

Q. Your wife, she wasn't working, was she?

A. She is working.

Q. She is working and you were out getting drunk day and night and betting on horses?

A. At that particular time——

Mr. Singer: That is all right; that is all.

[fol. 449] Cross-examination.

By Mr. Wegman:

Q. Mr. Jones, in all the times that you have known Harry Berger, did he ever have a mustache?

A. Never.

Q. On your visits to this Parisian Dance Hall did you ever have anybody with you who did have a mustache?

A. I did.

Q. Do you know what the occupation of that man was?

A. No, I do not. I think he is a soda dispenser, but he went there, and he made them think he was a lawyer.

Q. That wasn't Harry Berger?

A. No, he went there for the purpose of getting friendly with the girls. It wasn't Harry Berger, but he tried to pose as a lawyer to help me in the case to better himself.

Q. Mr. Jones, you never heard of Harry Berger making any bets on horses or taking any bets on horses?

A. Never.

Q. You never made any bets with Harry Berger?

A. Never did.

Q. You never heard of Harry Berger having anything to do with counterfeit money?

A. No, sir.

Q. Harry Berger never mentioned counterfeit money to you, did he?

A. No, never did.

By Mr. Singer:

Q. You are saying, in other words, that Harry Berger is a swell fellow?

A. So far as I know he is a very nice fellow.

Q. You are careful to say as far as you know?

A. Yes.

[fol. 450] Mr. Singer: That is all.

Mr. Crooks: The defendant Jones rests.

(Mr. Kamber opens to the jury on behalf of the defendant Jack Rice.)

ELMER STAHLNECKER, called as a witness on behalf of the defendant Rice, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kamber:

Q. Now, Mr. Stahlnecker, please talk out loud so that this gentleman will hear you, and so that my good friend Singer will hear you, who is sitting right there. What is your full name?

A. Elmer Stahlnecker.

Q. What is your business?

A. My business has to do with printing and advertising.

Q. Do you know Mr. Rice?

A. I do.

Q. How long do you know him?

A. Approximately eight years. I met him either in April or May of the year 1926.

Q. And you had an office with him?

A. I did.

Q. That is, you had a desk in his office?

A. I had the use of his desk and telephone and mailing service. That was from about June, 1932, until the end of December, 1933.

Q. Now, you were present at the time when the raid was made on his office by the Secret Service people, were you?

A. Yes.

[fol. 451] Q. And you were arrested at that time?

A. I was not arrested, I do not believe.

Q. What happened to you?

A. I was taken into custody by them. There was Mr. Fitzgerald, and Mr. Godby, who were among the Secret Service, and they escorted me over to the Detective Bureau, whatever you may call it, on 47th or 48th Street on the west side. I was not in a patrol wagon, and I was held in custody until the other gentlemen had been cross-examined, and about 10:30 I was released and sent home.

Q. Did you make a general plan of the office of Mr. Rice at 1476 Broadway, Room 716?

A. I did.

Q. According to scale?

A. Yes, it scales a half inch to each foot.

Q. I show you this, and did you do that personally?
A. Yes, I did.
Q. When did you make this plan?
A. Last night.
Q. Is the office in the same condition as it was in the month of December?
A. As near as I can recollect, I have noticed no changes.

Mr. Kamber: I offer this plan in evidence.
Mr. Singer: There is something about "Jack" written on there. I do not know what that has to do with the plan.
Mr. Kamber: Where is that?
[fol. 452] Mr. Singer: Here it is. Eliminate the word "Jack," wherever that word "Jack" is written.
The Court: What is it that has come up, Mr. Singer? Tell me what you are speaking about.
Mr. Kamber: There is something written there about Jack and something written about Phil.
Mr. Singer: Those words on there do not describe anything and I do not know what they indicate.
The Court: You had better mark it for identification until you prove it, because if those things are on there and they shouldn't be there, it should not go before the jury.
Mr. Kamber: I will mark it for identification and I will ask him about it.

(Marked Defendant's Exhibit B for identification.)

The Witness: Those two names——
Q. Wait a minute, there is nothing before you, just wait a minute. Referring to Exhibit B for identification, will you please explain to the Court and jury and to Mr. Singer what you mean?

Mr. Singer: Never mind explaining to Mr. Singer, never mind mentioning that, just explain it.
[fol. 453] Mr. Kamber: All right, pardon me, I take it all back. I won't take your name in vain again.
Mr. Singer: Mr. Kamber, what you do not say you do not have to take back.

Q. Referring to Defendant's Exhibit B for identification, you have in a circle there the word "Phil;" do you see it there?
A. Yes.

Q. What is that?

A. After the word "stool" with an arrow pointing to it, right beneath it.

Q. "Stool"?

A. Yes. It is a stool with four legs, a round seat and no back. Then on the opposite one where the word "Jack" appears is a similar stool. That represents the place where Jack Rice has always been sitting at the work bench while engraving jewelry, and the one stool marked "Phil" represents a stool where his workman sits while engraving jewelry.

Q. So, in other words, Phil is his working man?

A. That is right.

Q. And Jack is the defendant?

A. Jack is the defendant.

Q. And the stool you have there, as you call it, is the stool upon which he was sitting and working there, is that right?

A. While engraving jewelry.

Q. And the same is true of the stool marked "Phil"?

A. That is right.

The Court: Do any other names appear on there besides those?

[fol. 454] Mr. Kamber: I do not see any other names.

The Witness: No other names.

Mr. Singer: May I see it?

Mr. Kamber: Yes, certainly.

The Court: All right; go ahead, Mr. Kamber.

Mr. Kamber: I offer this in evidence, if your Honor please, with that explanation.

The Court: All right; is there any objection?

Mr. Singer: I do not know what it proves; I do not know what it is offered for, if your Honor please.

The Court: For the purpose of showing the lay-out of the place.

Mr. Singer: All right; I have no objection.

(Defendant's Exhibit B for identification now marked in evidence.)

Q. First of all, can you tell the jury on what floor that is?

A. It is the seventh floor.

The Court: If you have another copy I could look at it and the jury can look at it at the same time and probably understand better.

Mr. Kamber: Give it to the jury and I will ask questions that will not require it at the present moment.

Mr. Singer: Of course, if your Honor please, if this man is going to do any explaining about this diagram, he cer-
[fol. 455] tainly hasn't, by any stretch of the imagination, qualified himself as anyone competent.

The Court: That is right, but I understand he measured it.

Mr. Singer: If he is offering the plan, the plan speaks for itself and we can all read it.

The Court: But he is going to ask him some questions, I suppose.

Mr. Kamber: I am going to ask him some questions about the plan.

Mr. Singer: But the plan speaks for itself.

Mr. Kamber: I want to examine him as to it. He made it, according to his testimony, according to scale, so we would all understand the condition of this.

Mr. Singer: I do not want to quarrel about the plan, but it appears not to be drawn to scale. There are on the plan some measurements indicated as about so many feet.

Mr. Kamber: I object to that, if your Honor please. If you have any objections, make them to the Court.

Mr. Singer: Wait a minute; I am talking about the plan in evidence.

The Court: You didn't object to it.

Mr. Singer: Your Honor, here is the point. If it is offered for the purpose of showing the general lay-out, that is one thing, but there are measurements on there indicating that
[fol. 456] they weren't exactly drawn to scale. Here the writer writes about eight feet and some odd inches. That would indicate it wasn't drawn accurately.

Mr. Kamber: There is no such thing here.

Mr. Singer: Don't tell me there is no such thing. You look at it and I will show it to you. Give me the paper.

The Court: Will you please stop?

Mr. Kamber: All right, let the jury see it——

The Court: Just a minute. Stop and let him look at it.

Mr. Kamber: All right, let him look about it.

The Court: Do not have so much acrimony.

Mr. Singer: Right here is the symbol Abt 5 feet 3 inches, meaning about 5 foot 3 inches. Now, if it was drawn accurately I do not know how that could be.

Mr. Kamber: You can cross-examine him.

Mr. Singer: Well, there it is; it indicates right on the face of it.

The Court: All right; you can cross-examine him. You didn't object when it was offered.

Q. Referring to the plan, Exhibit B, first of all, you say the office is on the seventh floor?

A. Correct.

[fol. 457] Q. Now, as you go in, are there single doors or double doors?

A. There is a double door at the main entrance, then one door opens on the right.

Q. As you go in, looking at this plan, will you please indicate on this plan, being a photostat copy of the plan that the jury has before it, the first room that you go in? How large is that? Please indicate on the plan where that is.

A. That is on the lower right hand.

Mr. Singer: I do not know that he should testify to that. We can all read that. That is why he drew the plan.

The Court: I do not know whether it tells how to go in.

Mr. Kamber: Yes, there is a writing on there, "Entrance."

The Court: All right, let him go on.

Q. Go ahead. Going through the entrance the room is how big?

A. It measures 6 foot 1 inch by 6 foot 3 inches.

Q. After you get into that room, the 6 foot room, do you strike a partition?

A. Yes, there is a board, a panel and glass partition 7 foot high.

Q. How high is the partition?

A. 7 foot high.

Q. How high is the ceiling from the floor?

A. The ceiling is 10 foot 1 inch above the floor.

Q. So that the partition, from the ceiling to the partition there is approximately 3 feet?

[fol. 458] A. It is exactly 3 foot 1 inch.

Q. And that is open?

A. Correct.

Q. So that the partition doesn't reach entirely to the ceiling?

A. No.

Q. As you go into that 6 foot room you find a door there, don't you?

A. Yes, sir.

Q. Where is that on your plan?

A. As you go in the main entrance there is indicated a door, marked 2-foot 8-inch door. That opens there to the right.

Q. That opens to the right into another room?

A. Yes.

Q. How big is that room?

A. That room is 7 foot 1 inch by 8 feet 6 inches.

Q. And from that room you go into another room?

A. Yes, you go into the workshop.

Q. Into the workshop?

A. Yes.

Q. Is there a door between the workshop and that room?

A. No, I have indicated that as two foot 0-½ inch passage.

Q. That is, in other words, between that room and the workshop——

A. Yes.

Q. Between the workshop and the second room you go into there is absolutely no door at all?

A. No.

Q. Now, with respect to that, where is the safe?

A. The safe is directly opposite that passage as you go into the workship.

Mr. Singer: This is on the paper, everything he is testifying to.

[fol. 459] The Court: If it is we are wasting time.

Mr. Kamber: May I ask——

Mr. Singer: We are not here to have our time wasted.

The Court: Go ahead.

Mr. Kamber: All right; what was the last question?

(Last question repeated by the reporter.)

The Court: I do not know whether it is on there or not.

Mr. Singer: It is written, it is written "safe," "passage," "door," and everything.

Q. Have you got the size of that safe on there?

A. Yes, I have. It is indicated on the paper with arrows pointing to the safe, and the dimensions are given as 2 foot 5 by 2 foot 0 inches.

Q. How large is the entire office there?

A. The office contains approximately 210 square feet. The outline dimensions of everything is given as exactly measured by a foot rule.

Q. In other words, the entrance from the office into the workshop is open, as you say?

A. Yes.

Q. There is no door there?

A. No.

Q. And people in the room, in the one room, can see what happens from one room into the other?

[fol. 460] Mr. Singer: I object to that. You can't see around a corner.

The Court: Don't tell him; ask him if they can.

Q. Can they see from one room into the other?

A. They can.

Q. As a matter of fact, where you have indicated the word "Phil," is that the name Phil?

A. Yes.

Q. At that seat anybody looking in can see anybody coming into that first room you mentioned, where you come in from the entrance?

A. You can.

Mr. Kamber: That is all.

Cross-examination.

By Mr. Singer:

Q. You just said anybody standing in one room can see what is going on in the other room. You do not want to say that is actually 100 per cent?

A. I do not understand that question as you present it.

Q. Mr. Kamber asked you whether anybody standing in this one room could see what was going on in the workshop. You know that is impossible, because it would all depend——

Mr. Kamber: I object to the District Attorney commenting on what he thinks is impossible.

The Court: All right; go ahead and ask him.

[fol. 461] Mr. Kamber: Ask him the question.

The Court: Go ahead, ask him.

Q. As a matter of fact, you know that is absolutely impossible, unless he can look through a wall.

Mr. Kamber: I object to that. He didn't so testify, and the evidence is the proof of that.

Q. You cannot look through a wall——

The Court: Let the jury look at it and determine for themselves.

Mr. Singer: They can look at it with me. I am going to show it to the jury.

Q. Here is the passage where I have my finger. Will you put the plan up that way? Here is the place that you have marked "passage"?

A. Yes.

Q. Will you tell me where a man can stand, where the word "chair" is, will you tell me how he can stand where the word "chair" is and see what somebody is doing where the word marked "Jack" is, unless he can see through a wall?

A. I didn't say that.

Q. You said, did you not, that you could be out in the outer office and see what was going on in the work room?

Mr. Kamber: I object to that.

[fol. 462] Q. Or did you not want to say that?

Mr. Kamber: I object to that. He did not say anything of the kind.

A. I did not.

Q. If you did not say it——

The Court: He said he did not.

Q. The jury heard what you said. As a matter of fact, the night you were arrested there were a couple of other men arrested——

Mr. Kamber: Now, they were taken into custody. I object to that.

Mr. Singer: You brought it out.

The Court: Objection overruled.

Mr. Kamber: I will concede five men were arrested for his benefit,

The Court: He is asking him a question. You should sit down when you are not questioning the witness.

Q. The night that Rice was arrested you say that you were escorted over to the Detective Bureau by one of the agents?

A. Right.

Q. It wasn't Agent Fitzgerald, I think you meant Agent Kett, the man with the gray suit on, isn't that right, this man right here?

A. No.

Q. It wasn't him?

A. No.

Q. It wasn't this man right here, Mr. Fitzgerald?

A. No.

Q. I think you had his name wrong because you said [fol. 463] Fitzgerald.

A. I meant this gentleman there.

Q. You meant him?

A. I meant him, for he was part of the raiding party.

The Court: By "this gentleman" you mean Kett?

Mr. Singer: Mr. Kett.

Q. The fact of the matter is, there were some other men there besides Rice and Lee, isn't that right?

A. Right.

Q. Do you know these other men?

A. I did not know them personally.

Q. I didn't ask you that. You see, you do not answer the questions that I ask. Did you know them?

A. No.

Q. Did you know who they were?

A. No, not by name.

Q. Did you know what they were doing in that office?

A. No.

Q. Don't you know that they had been there very, very often before that?

Mr. Kamber: One moment. Is that fair?

A. I did not.

Mr. Kamber: Is that fair?

The Court: He can ask him if they had been there.

[fol. 464] Q. You had been there very often before?

A. Prior to the end of 1933?

Q. Yes; you were there many times?

A. Yes.

Q. You said you and Jack Rice were very good friends?

A. We were.

Q. You came to his office frequently?

A. Yes.

Q. Now, do you want to limit your answer in that regard that you only came there prior to the first of 1933 or prior to the first of 1932?

A. No; I wouldn't put it that way.

Q. What do you mean?

Mr. Kamber: Let him answer. Give him a chance.

Mr. Singer: All right.

A. I had the—he offered me the use of his office as a mailing address and telephone service.

Q. When was that?

A. That was in June, 1932.

Q. Yes.

A. That was continued to the end of 1933. However, there was stray mail that would come up there, and once in a while messages would come in after the end of 1933, and I would come up there about them. I would stop in then and get such data as might came in.

Q. Now, it is your statement then that up to January 1, 1934, you came to the office almost every day?

A. Almost every day.

Q. After that time you only came occasionally?

A. Right.

[fol. 465] Q. Now, when these men, when Rice was arrested, were these men, these other men, were they in the workshop, the outer office, the 6 x 6 room, or the second office?

A. When I went in there was one man, Lee, was in the outer space, and another chap, a fat man, I forget what his name is, a stout chap, I do not know him, he was on the inside in the workshop.

Q. Where was Dapper Don Collins?

Mr. Kamber: I object to that. It is improper. I do not want to ask for a mistrial about Dapper Don Collins, but so far as this witness is concerned, that is highly improper.

The Court: If there was anybody who was present when the raid or arrest was made who has not been described, let him ask him who was there. If anybody was there, let him ask about him.

Mr. Kamber: If he knows.

The Witness: The man described as Dapper Don Collins came in after I had been inside, and I did not see him until after the Federal Agents had come in.

Q. That means, then, that you say he was not in the work room at all?

A. Not when I was there.

Q. Had you ever seen him in that office before?

A. I believe I seen him once.

[fol. 466] Q. Had you ever seen that fat fellow before?

A. I saw him once or twice.

Q. This fat man you described, had you ever seen him before?

A. I recollect about twice.

Q. Did you know whether these men had any business with Rice?

A. No.

Q. Do you know whether they were calling to see Mr. Lee?

A. No, I do not know what their business was.

Q. You do not know anything about it?

A. No, I never talked anything to them; I do not butt into other people's business.

Q. I know you do not, I know you do not, but I just want to know whether they had any business dealings with Rice, to your knowledge, whether you butt into his affairs or not makes no difference.

A. I never saw any business transaction or heard any business talk going on any time when I was there.

Q. So far as you were concerned, there was no business going on in the office at all at any time?

A. Jewelry engraving.

Q. That is what I am talking about, jewelry engraving.

A. Yes.

Q. Did those men have any jewelry engraving business?

A. I do not know.

Mr. Singer: Will you stand up, Katz, please?

(Mr. Katz stands.)

Q. Look at this man. Did you ever see him—I indicate the defendant Katz—did you ever see him in that office?

A. No, I did not.

[fol. 467] Q. He was not there, of course, the night when Mr. Rice was taken into custody?

A. No.

Q. At no other occasion was he there, as you can remember?

A. I never recall seeing him.

Q. If you had seen him you would recall it?

A. Yes.

Q. You can't recall ever seeing him?

A. No.

Q. Do you think you can recall almost every person that you saw at that place?

A. Yes.

Q. Wasn't it quite a busy office with a lot of engraving work going on?

A. Well, they did have a lot of work, yes.

Q. And people were coming in constantly with packages and articles to be engraved, and would go out?

A. Yes.

Q. And yet you say, of course, that you could recognize any of those persons if you saw them again?

A. Well, not all of them.

Mr. Singer: That is all I wanted to know. Thank you. That is all.

Mr. Kamber: That is all.

(Witness excused.)

Henry McAleenan, called as a witness on behalf of the defendant Rice, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kamber:

Q. Mr. McAleenan, are you a member of any firm?

A. No, I am not a member of any firm.

[fol. 468] Q. Are you connected, associated in business with any firm?

A. I am.

Q. What firm is that?

A. McAleenan.

Q. Where are they located?

A. 1330 Broadway, New York City.

Q. How long have they been in business?

A. Since 1844.

Q. 1844?

A. That is right.

Q. What is their business there?

A. Pawnbrokers.

Q. How long have they been at Broadway, what is that, and 44th Street?

A. 35th Street.

Q. 35th Street?

A. I would say about 43 or 44 years.

Q. In the course of your business did you have any business with Mr. Rice over there?

A. Yes.

Q. The man sitting over there?

A. Yes.

Q. How long have you known him?

A. I would say around eight to ten years.

Q. What business did you have with him, if any?

A. He used to do our engraving for us.

Q. How long has he been doing your engraving?

A. For eight, ten years, I know.

Q. Up to the present time?

A. Up to the present time.

Q. He did quite a little engraving for you—I withdraw that. Do you know whether or not, around the holidays, November, December and January, there is more business along the engraving line than at any other time?

A. There usually is, yes.

[fol. 469] Q. That is, during that season there is usually more work for engravers and more work to be engraved?

A. That is correct.

Q. You say you have done business with him about ten years?

A. Eight or ten years, I couldn't be sure.

Q. Do you know where his place of business is?

—. I have never been there, no.

Q. Did you send merchandise up, or did he send for it?

A. Well, I would send for it, I would send it up to him if we needed a hurry job, and other times he would send for it.

Q. During that time a considerable amount of valuable merchandise was delivered to him from time to time?

A. That is right.

Q. You always got it back?

A. Yes.

Q. Properly engraved, no loss in any merchandise in all these ten years?

A. None whatsoever.

Q. Do you know some other people, engravers or other people, business people, that knew him also?

A. The man——

Q. Do you know a number of people that know him?

A. I know three or four offhand.

Q. Have you discussed his reputation with them or his standing in the community?

A. We never had any occasion to.

Q. From your knowledge of him, from your business relations with him, what would you say as to his reputation for truth and veracity?

A. I have no occasion to find fault or find anything wrong with it.

Q. Was it good or bad?

A. It is good.

Mr. Kamber: You may inquire.

[fol. 470] Cross-examination.

By Mr. Singer:

Q. He is a good engraver?

A. Yes, sir.

Q. Very skilful?

A. Well, he was good for the character of work we gave him.

Q. I mean, you gave him rather delicate work, did you not?

A. No, mostly initial work.

Q. That has to be done very carefully?

A. Well, yes, but—the ordinary engraver can do a good job on plain initialing.

Q. Did he do any fancy initialing for you?

A. No, not for us; we didn't have any.

Q. You didn't have any fancy initialing to be done?

A. No.

Q. He has the reputation in the trade of being a pretty good engraver?

A. As far as I know, he has always been satisfactory for us.

Q. That is what I mean, as an engraver?

A. Yes.

Q. You do not know anything about his home life, do you?

A. No.

Q. You do not know anything about his social contacts?

A. No, sir.

Q. You do not know anything about his associates?

A. No, sir.

Q. At times other than business times?

A. That is all.

Q. You have never made his office your hangout, to use the slang expression?

Mr. Kamber: Go ahead and use the expression "hangout."

Q. You have never made a habit of spending a lot of [fol. 471] time in his office to find out who his associates were?

A. I have never been in his office.

Mr. Singer: That is all.

Mr. Kamber: That is all.

(Witness excused.)

Charles J. Klauberg, called as a witness on behalf of the defendant Rice, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kamber:

Q. What is your business?

A. Cutlery business and specialties, and a certain amount of jewelry retail.

Q. Where is your place of business?
A. One place at 43rd and Madison, another one in the Woolworth Building.
Q. What is the name of your firm?
A. C. Klauberg & Brothers, Inc.
Q. How long have you been in business?
A. Since 1819.
Q. How long do you know Mr. Rice?
A. We have been uptown ten years, and I think shortly after we went uptown.
Q. Has he done work for you?
A. He does engraving for us.
Q. Has he an office?
A. I believe so; we send things over there.
[fol. 472] Q. Do you know people that know him?
A. I would not have occasion to, no——
Q. Well,——
A. I do recall somebody referred me to him years ago, and we have been going to him ever since.
Q. And during that time all the merchandise that you sent to him has come back properly?
A. Yes.
Q. And he is a pretty good engraver?
A. Very good, I would say.
Q. What?
A. I always thought very good.
Q. A very good engraver?
A. Yes.

Mr. Kamber: That is all.

Cross-examination.

By Mr. Singer:

Q. You do not know Mr. Rice's personal associates, his friends, do you?
A. No, I did not.
Q. You never associated with him outside of a business way?
A. No.
Q. Is that correct?
A. That is correct.

Q. You have no knowledge of where he spends his evenings or who he spends them with?

A. None whatsoever.

Q. Your only testimony is, in so far as his engraving work is concerned, he did very excellent work?

A. That is right.

Q. And promptly returned the merchandise and got paid?

A. That is right.

[fol. 473] Mr. Singer: That is all.

Mr. Kamber: That is all.

(Witness excused.)

Vincent Abbott, called as a witness on behalf of the defendant Rice, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kamber:

Q. Mr. Abbott, where is your place of business?

A. I am employed with Ambercrombie & Fitch Company.

Q. Where — they located?

A. 45th and Madison.

Q. Do you know Mr. Rice?

A. Yes.

Q. How long have you known him?

A. About four years.

Q. Have you done any business with him?

A. Well, the company has done a great deal of business with him.

Q. Do you know him at all socially?

A. No.

Q. Do you know people that know him?

A. Only in a business way.

Q. Well, how many people do you know that know him? Quite a few?

A. Everyone in the organization, I believe, knows him, knows of him.

Q. You say your company has done quite a lot of business with him?

A. Yes.

Q. And of course you say—have you discussed his repu-
[fol. 474] tation, his standing at any time?

A. I hardly think his reputation or standing, no.

Q. Did you talk about——

A. We have talked about his work, yes.

Q. And his personality?

A. Nothing to do with him personally, no.

Q. In any event, your firm, Abercrombie & Fitch, have been doing business with him for a considerable amount for the last four years?

A. Yes, sir.

Q. And you have found that his work is satisfactory, and that the merchandise was returned to you right along?

A. Yes, sir.

Q. Let me ask you this: Is it not a fact that during the months of December and January, or during the Christmas holidays, around there, a month or two before and after that, there is a considerable amount of engraving done?

A. That is right.

Q. More so than at other parts of the year?

A. That is right.

Q. And that all of this engraving, so far as your concern was concerned, went to Mr. Rice, or most of it?

A. Most of it; we have other engravers as well.

Q. But he got the major portion of the business, would you say?

A. I should say as much as any other engraver, yes.

Mr. Kamber: Your witness.

[fol. 475] Cross-examination.

By Mr. Singer:

Q. Again, you have never associated with Mr. Rice, have you, outside of business?

A. I think I had lunch with him once.

Q. You do not make it a habit to go out with him in the evening?

A. No.

Q. You do not know his friends?

A. I do not.

Q. You do not know his business associates?

A. I do not.

Q. You haven't made a habit of going to his office and spending any length of time there?

A. No.

Q. All you know is there is a man named Jack Rice, you have met him several times, he does engraving work for your firm, he takes it over to his place, and you get it back with the proper initials eng-aved on it, is that correct?

A. That is correct.

Q. You get your merchandise and you pay him?

A. Yes, sir.

Q. What he does with his time in the evening you do not know?

A. I have no idea.

Q. You do not know who he associates with at night?

A. No.

Q. You do not know anything about that?

A. No.

Q. What he does at night or outside of his business, or anything about his associates outside of business at all?

A. No, I do not.

Mr. Singer: That is all.

[fol. 476] Redirect examination.

By Mr. Kamber:

Q. You have been up to Mr. Rice's office, haven't you?

A. Yes.

Q. And you have had lunch with Mr. Rice, haven't you?

A. Once.

Q. And your firm has been in existence how many years?

Mr. Singer: I do not think that is proper.

Mr. Kamber: All right, withdraw it.

Q. Your firm is pretty careful who it gives its merchandise to, who it sends it out to?

Mr. Singer: I object to how careful his firm is.

Q. You are pretty careful——

Mr. Singer: And I want to say now that Abercrombie & Fitch Company have nothing to do with this issue; they are not on trial here.

Mr. Kamber: I object to Mr. Singer making speeches.

The Court: One moment. What is it you want to know?

Mr. Kamber: I asked him a question whether the firm of Abercrombie & Fitch in their business are not careful as to whom they give their merchandise to.

The Court: He has already told you they give their merchandise out to Mr. Rice to have it engraved, and it [fol. 477] was properly returned.

Mr. Kamber: All right; that is all.

(Witness excused.)

Charles E. Muniz, Jr., called as a witness on behalf of the defendant Rice, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kamber:

Q. How long have you known Mr. Rice?
A. Between seven and a half and eight years.
Q. Do you know him socially?
A. I do.
Q. How long have you known him socially?
A. Between seven and a half and eight years.
Q. Do you know people that know him?
A. I do.
Q. Do you belong to various clubs or lodges?
A. I belong to a Masonic fraternity that he belongs to.

Mr. Singer: Mr. Kamber, that wasn't very nice.

Mr. Kamber: I asked him if he belonged——

Mr. Singer: Mr. Kamber, that wasn't very nice.

The Court: Go ahead, go ahead; very improper, go ahead.

[fol. 478] Q. Do you know people that know him?
A. I do.
Q. Have you discussed his reputation for truth and veracity?
A. I have heard his reputation discussed, particularly when he was about to become Master of his Lodge.

The Court: We have had enough of that. You have heard me say that was improper, and you shouldn't repeat it.

Q. Have you discussed it with his friends, with business associates or friends?

A. Yes.

Q. What is his reputation for truth and veracity? Good or bad?

A. Very good.

Mr. Kamber: You may inquire.

Cross-examination.

By Mr. Singer:

Q. As to this man's personal friend, did he ever introduce you to another of his associates, Mr. Katz?

A. No.

Q. Did he ever introduce you to another of his associates, Dapper Don Collins?

A. No.

Q. Did he ever introduce you to another of his associates, a man named Fat?

A. No.

Mr. Kamber: Wait a minute. I submit that there is no evidence here about Mr. Dapper Don Collins, Mr. Fat or Chap or Knapp, or any other person, and I do not think it [fol. 479] is proper for Mr. Singer to create an atmosphere about Mr. Dapper Don Collins or Mr. Chap or Knapp, or whoever they are, I do not know what they call him.

The Court: Proceed, Mr. Singer.

Mr. Kamber: And I do not think that this atmosphere should be created before the jury.

The Court: Proceed, Mr. Singer.

Mr. Kamber: I object to the question upon that ground.

The Court: Go ahead. The question has been answered.

Q. Do you know Mr. Rice and his wife, both?

A. I do.

Q. You have been to Mr. Rice's home where he lives with his wife?

A. Well, I have never been to his home.

Q. Where does he live, this friend of yours?

A. At the present time in New York some place.

Q. New York is quite a big place.

Mr. Kamber: I object to any argument with the witness.

Q. Where does he live?
A. I do not know definitely where he lives.
Q. Do you know where his wife lives?
A. No, I do not.
Q. As a matter of fact, you know that he and his wife do not reside in the same place? You know that, do you?

[fol. 480] Mr. Kamber: Wait a minute, wait a minute; is that fair?

The Witness: I do not know that to be a fact.
Mr. Kamber: I object to that question.
The Court: The question has already been answered.
Mr. Kamber: I move to strike it out.
The Court: Motion denied.
Mr. Kamber: I take an exception.
The Court: Proceed.

Q. Were you ever at any home or any place where Mr. Rice was then supposed to be living?
A. No.
Q. When you say you knew him socially you mean you know him only at the times when he met you?
A. That is correct.
Q. But you do not intend, or do you intend, to convey the idea to those present here that you knew about all of Mr. Rice's activities?
A. No, I do not.
Q. There are many things that he may have done——

Mr. Kamber: Please do not answer until I have an opportunity to object.

Q. There were many times when he went out socially when you weren't along?

Mr. Kamber: I haven't any objection to that.

[fol. 481] Mr. Singer: I feel wonderful that I have been able to please you.
The Court: Go ahead.

Q. Will you answer that, please?
A. That is correct.
Q. Did you spend much time at his office?
A. No, I did not.
Q. You had your own business to attend to?
A. Fortunately, yes.

Q. And fortunately you were kept busy enough so that you couldn't spend your time in Mr. Rice's office and see what he did at all times?

A. That is correct.

Q. So that when you say here that you have known him socially you mean "in the neck"?

Mr. Kamber: I do not know what that is.

Mr. Singer: If you do not know, I will be glad to explain it to you sometime outside.

Q. You mean stripping it of its non-essentials——

A. Yes.

Q. (Continuing:) —that you have been out with the man he has been in places where you have been, you have broken bread with him or dined with him, but as far as his life is concerned, you do not know a thing about it except that which he chose to show you, isn't that so?

A. That is correct.

Mr. Singer: That is all.

[fol. 482] Redirect examination.

By Mr. Kamber:

Q. You do not know anything about him except what he chose to show you, is that correct?

A. That is correct.

Q. Did he choose to show you his wife?

A. I think I have met Mrs. Rice.

Q. Did he choose to show you himself when he and his wife and you and your wife went out to dinner on a number of occasions?

A. At various affairs, that is correct.

Q. Did he choose to show you on a number of occasions when he and his wife and you and your wife went out to affairs, at least, to dinners and affairs of that character?

A. That is correct.

Q. And you knew him socially in the ordinary course of social functions, is that correct?

A. That is right.

Q. That is, in other words, you didn't follow him up every night to see what he was doing or anything of that kind, did you?

A. No, I did not.

Q. And when Mr. Singer belches out about several na. of course, you do not know these names, do you?

A. No.

Mr. Singer: No, I never belch out anything——

Mr. Kamber: All right; that is all.

Mr. Singer: What is the answer?

Mr. Kamber: He says "No," he doesn't know these men.

[fol. 483] Mr. Singer: I do not know them either, Mr. Kamber.

Mr. Kamber: All right, that is all.

Mr. Singer: No, it isn't.

Recross-examination.

By Mr. Singer:

Q. You say you have been out to dinner with Rice and his wife. How long ago would you say was the last time?

A. I would say about two or three years ago.

Q. Since that time you haven't seen Rice, you haven't seen Rice and his wife at all together, have you?

A. No, I have not.

Q. And if you have gone out with him you have gone out with him without his wife since that time?

A. That is correct.

Q. Have you gone out with him with any other ladies?

Mr. Kamber: Wait a minute. I object.

A. No.

The Court: He says "No."

Mr. Singer: That is all.

Mr. Kamber: All right.

(Witness excused.)

[fol. 484] Raymond Demarest, called as a witness on behalf of the defendant Rice, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kamber:

Q. Where do you reside, Captain?

A. In Englewood, New Jersey.

Q. Do you know the defendant Rice?
A. Yes.
Q. How long have you known him?
A. Since the spring of 1926.
Q. About eight years?
A. Approximately.
Q. Do you know people that know him?
A. Yes.
Q. Have you had occasion to discuss his reputation for truth and veracity?
A. Yes.
Q. What is it, good or bad?
A. Very good.

Mr. Kamber: You may inquire.
Mr. Singer: That is all.
Mr. Kamber: That is all.
We will rest so far as character witnesses are concerned. I thought I had another man. I have telephoned for two other persons, and I see they are not here, if your Honor please. I will get them here first thing in the morning. They are business men; they do not want to come until they are actually needed. I didn't know what time they would be needed.
The Court: Is that all we have, then?
Mr. Kamber: I could telephone them.
Mr. Singer: They couldn't get here before five o'clock.
[fol. 485] The Court: No.
Mr. Singer: I would suggest that we adjourn for the day, but I would like your Honor to advise counsel that he ought to be ready tomorrow to finish.
Mr. Wegman: May I ask your Honor to instruct the representative of the Police Department for the City of New York to return tomorrow morning with the records that he has? I understand that he is here in court this afternoon.
Mr. Singer: The man is here right now.
The Court: Come back tomorrow with those records. (Addressing the jury:) Do not allow anybody to talk to you about this case, do not discuss it between yourselves, do not form any opinion until it is finally submitted to you. Return tomorrow morning at ten o'clock. We will start tomorrow morning at ten o'clock instead of ten-thirty.

Adjourned to March 22, 1934, at ten A. M.

[fol. 486] Brooklyn, N. Y., March 22, 1934.

Met pursuant to adjournment at 10 A. M.; present as before.

PHILIP AARON, called as a witness on behalf of the defendant Rice, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kamber:

Q. Mr. Aaron, please talk out loud so that this gentleman can hear you. Your name is Philip Aaron?
A. That is right.
Q. What do you do?
A. I am a jewelry engraver.
Q. And where are you?
A. 1476 Broadway.
Q. For whom do you work?
A. For Jack Rice.
Q. And you are still working for him?
A. I am.
Q. How long have you worked for him?
A. For 15 years.
Q. How long have you worked at that place on Broadway?
A. Ten years, to be exact.
Q. And where is the office, where is the place in that building on Broadway that the office is?
A. It is on the seventh floor.
Q. Now, showing you Defendant's Exhibit B, will you please describe the office in particular with respect to the room or rooms in that office, the room as you go in and the room or rooms of that office from that plan?
[fol. 487] A. Well, immediately upon entering from the outside we enter a small space——

Mr. Singer: If your Honor please, I hate to interrupt, but he is now explaining a plan that the man that drew explained; we are going through the same thing again, describing an office from a plan that he didn't draw and somebody else explained.

The Court: Why don't you ask him the questions and he can tell you? Ask him himself. He didn't draw that plan.

Mr. Kamber: No, he didn't.

The Court: All right, ask him about the office without reference to the plan.

Q. Will you describe, without referring to this plan, then, will you describe the lay-out of that office?

A. Yes, I will.

Q. Go ahead.

A. When we open a door is a small office, used, I might say it is not an office, it is a place used for customers to come in.

Q. That small sized place, how big would you say this small office is?

A. The first office, it is not exactly an office, it is a place where a customer would come in——

Q. Call it what you will.

A. I might say it is about 5 feet square. Next door is an office where a desk is used.

Q. How big is that room?

A. I would say that is about 5 x 6.

[fol. 488] Q. Then from that room where do you go?

A. I go right into my workshop.

Q. Is there a door between your workshop and that room you described where the desk is?

A. No, there is no door whatsoever.

Q. That work room, how big a place is that work room, would you say?

A. I might say it is about 7 feet long by 5 feet wide.

Q. And what is in that work room?

A. Two benches used exclusively for working, engraving.

Q. Where do you sit?

A. Upon entering from the office I sit on the left side, facing the left side of the window.

Q. Sitting there at your work bench, can you observe anybody coming into the office, in the room that you described?

A. Yes, I can.

Q. I mean the second room where the desk is.

A. Yes, I can.

Q. In that workshop is there a safe?

A. Yes.

Q. How big a safe would you say it is?

A. Well, I have never taken the measurements, but I imagine it would be about 3 feet high.

Q. What is it called? What is the name of the safe?
A. It is a Nodler safe.
Q. What?
A. A Nodler safe.
Q. How many doors has it?
A. One door.
Q. Have you got the keys to that safe?
A. Yes, I have.
Q. Do you always carry the keys to that safe?
A. I always do.
Q. Now I show you this package here and ask you to [fol. 489] look at this. I show you this and ask you if you saw that before.

Mr. Singer: That isn't the safe, is it?
Mr. Kamber: When you have an objection to make, please make it.

A. Yes, I have.
Q. Where did you see that?
A. That is inside of the safe.
Q. When that is inside the safe, you mean inside the safe, does that practically take the space inside of the safe?
A. It takes up half the space inside of the enclosure of the safe.
Q. Did you take that out of the safe in the office to bring it down here at my request?
A. No, I did not.
Q. How did the box come here, this box?
A. You mean if I took this out at your request? Yes, I absolutely did.
Q. And you took that out of that particular safe in the office in the workshop?
A. Yes, I did.

Mr. Singer: I do not know how this is material to this case.
The Court: I do not know; maybe we will find out.

Q. And that is the same box.
A. Yes.
Q. That you took out of that particular safe in the workshop of the office of Mr. Rice?
A. That is right.

[fol. 490] Q. How long, if you know, has this little box been in there, in that safe?

A. That box, it has been in that safe for about seven years.

Mr. Kamber: I offer this box in evidence.

Mr. Singer: I certainly object to it. He might just as well offer any box in the world. There is nothing about a box in this case, and I won't have the jury overburdened.

The Court: He can't bring the safe over.

Mr. Singer: If he did bring the safe over, he could bring the whole office over, and it wouldn't have anything to do with the case.

The Court: But if he wants the box that came out of the safe, I will let him offer that box.

Mr. Singer: For what purpose? Just to parade up and down before the jury?

Mr. Kamber: Please stop making atmosphere.

Mr. Singer: I am not making atmosphere. This is a serious case.

The Court: All right; he has offered the box and we will take the box.

Mr. Singer: May I ask him now for what purpose? Is it just to make atmosphere before the jury?

[fol. 491] Mr. Kamber: Never mind about the purpose.

Mr. Singer: I want to know what the purpose *it*. Is there anything in that box?

The Court: I do not know. You are not offering the contents.

Mr. Kamber: Oh, no, no.

Mr. Singer: I have a right to see what is in that box.

Mr. Kamber: Look and see what is in the box.

Mr. Singer: It isn't my box.

The Court: The box is full of emptiness.

Mr. Kamber: Are you satisfied?

Mr. Singer: I am not satisfied. I do not know what it is here for.

(Marked Defendants' Exhibit C in evidence.)

Q. Now, you were arrested weren't you?

A. Yes, I was.

Q. And brought down in the august presence of Brother Singer that night?

A. Not that night.

Q. The next day?
A. Yes.
Q. You were in jail all that night that you were arrested?
A. Yes, I was.
Q. In the station house, when you were arrested, you were taken to the station house?
A. Yes, at first.
[fol. 492] Q. 47th Street Police Station?
A. Yes, that is right.
Q. Were you interrogated there by anybody?
A. Yes, I was.
Q. Who interrogated you?
A. Yes, the gentleman behind Mr. Singer.

Mr. Singer: Mr. Godby.

Q. That is Agent Godby?
A. Agent Godby.
Q. Then the next morning you were brought down to this office upstairs on the fifth floor?
A. No, I was brought down to Centre Street, I believe, headquarters.
Q. Centre Street Headquarters?
A. Yes.
Q. Police Headquarters?
A. Yes.
Q. What happened to you there?

Mr. Singer: I am not interested in what happened.
The Court: I know, but let him go ahead.
A. I was fingerprinted.

Mr. Singer: He was arrested and he was brought to Headquarters.
The Court: All right, let him answer.
Mr. Singer: I know, but it has got nothing to do with the case, no more than what I had for dinner last night; that would be just as material.
The Court: All right; what happened after that?
[fol. 493] The Witness: I was fingerprinted and I was photographed, I was asked questions.

Q. Then what happened to you?
A. Then I was brought over to Brooklyn Federal Headquarters under Mr. Singer.
Q. You talked with Mr. Singer?

A. I spoke to him.
Q. He examined you?
A. Yes.
Q. Mr. Godby was there?
A. Yes, he was.
Q. Then you were told to go home?
A. I was.
Q. And you went home.
A. I did.

Mr. Kamber: That is all. Your witness.

Cross-examination.

By Mr. Singer:

Q. Before I sent you home did I give you any telephone number and ask you to call me up after nine o'clock if you had any information?
A. You never did.

Mr. Kamber: That is perfectly all right.
The Court: Never mind about the laughing; that is all right.

Q. You have got no complaint to make about the way I treated you?
A. No, none whatever.
Q. I do not hear you.
A. None whatsoever.
Q. You weren't abused?
A. No.
Q. You weren't beaten, you weren't threatened?
A. No.
[fol. 494] Q. Nobody hollered at you?
A. No.
Q. You were treated just the way; the best way that you would ask to be treated?
A. The way I would naturally expect to be treated under the circumstances.
Q. You knew when you were arrested the night before there were quite a few other men arrested with you?
A. So I noticed.
Q. Do you remember when I talked to you the next day I asked you whether you had ever seen those men before?

A. I recall, yes.

Q. What did you say to me about that?

A. I have seen them, yes.

Q. Did I ask you what their business was up in the office? And you told me you didn't know what business they had?

A. I didn't know.

Q. You said you didn't know what they were doing there, isn't that so?

A. That is right.

Q. The fact of the matter is, there were certain people in that office when the raid was made in the office, who had been there before and whose business in that office you did not know, isn't that correct?

A. That is right.

Q. You told me also that Jack Katz had been in that office, didn't you?

A. I told you what?

Q. That Jack Katz, this man Katz——

A. Yes, I have seen him.

Q. And you said you didn't know his business there either?

A. That is right.

Q. If I can understand correctly all that you have told us here is that there is a safe in the office and a box that is inside that safe that you produced here?

A. That is right.

[fol. 495] Q. The fact of the matter is that you do not stay in that office all day, if I remember what you told me; isn't that correct?

A. That is right.

Q. Most of the time you are out digging up business?

A. Not most of the time.

Q. A considerable part of the time?

A. Yes.

Q. Let us say as much of the time as that fob takes up in a three-foot safe?

A. I go out every morning, I am out about an hour.

Q. Didn't you tell me you go out and bring in business to this place, engraving business?

A. Certainly I do.

Q. And that there are people——

A. Not most of the time.

Q. And that there are people that come into that office and that have business about which you know nothing?

A. Everybody that comes in does not buy——

Q. I didn't ask you that. I said there were people that came into that place and had business there that you did not know about?

A. That is right.

Mr. Singer: That is all.

Redirect examination.

By Mr. Kamber:

Q. You didn't go out during the months of December and January, did you?

A. I did not.

Q. Did you go out looking for business at all during the months of December or January?

A. I did not.

[fol. 496] Q. Isn't it a fact that during that time you are very busy?

A. Absolutely.

Q. That is the busiest part of the year?

A. Yes, that is our Christmas season.

Mr. Kamber: That is all.

Recross-examination.

By Mr. Singer:

Q. As a matter of fact, when I told you that you could go home, didn't I tell you that you could go home because I thought you had no connections with this matter criminally?

A. You told me to go home because I had no connections with it; I really haven't.

Q. That is right, that is true, and I said, "You go home because you look like an honest boy, and you had nothing to do with this," didn't I say that to you?

A. I remember that.

Q. And I said, "Be careful we do not get you in such a position again"; did I say something like that to you?

A. Something like that.

Mr. Singer: That is all.

Mr. Kamber: And you are still working for Mr. Rice?
The Witness: I am.
Mr. Singer: Well, you did not take my advice.
The Witness: What did Mr. Rice have to do with it?
Mr. Singer: That is all I asked, you didn't take my advice, that is all.
Mr. Kamber: That is all.

(Witness excused.)

[fol. 497] ETHEL B. MAHNKEN, called as a witness on behalf of the defendant Rice, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kamber:

Q. Madam, what is your business?
A. Assistant renting agent.
Q. For what building?
A. 1476 Broadway.
Q. Talk up a little louder, please.
A. 1476 Broadway.
Q. Is that the building that Mr. Rice has a place of business?
A. It is.
Q. How long has Mr. Rice been a tenant in that building?
A. I have known Mr. Rice for about eight years. He was a tenant before that, I think he has been a tenant about ten years.
Q. You are acquainted with his office, aren't you?
A. Yes.
Q. You have been there, haven't you?
A. Yes.
Q. Now, showing you Exhibit B. looking at that, would you say that that is a plan of his office?
A. Yes, it is.
Q. Have you ever been in his office?
A. Yes, I have occasion to go there.
Q. Do you recall whether there is a door between the workshop and the room that is Mr. Rice's office, or where the desk is?

A. No, there is no door; there is a passageway.
Q. There never has been a door there?
A. No.

Mr. Kamber: That is all.

[fol. 498] Cross-examination.

By Mr. Singer:

Q. You do not know who comes into the office, do you?
A. Beg pardon?
Q. You do not know who comes into that office?
A. Why, no.
Q. You do not know all the people that come in?
A. Not all the people, no.
Q. And you are not in there all day long, so you do not know what is going on inside?
A. No.
Q. All you know is that Rice has got an office in there, pays his rent, and he is all right, as far as you are concerned?
A. Absolutely.
Q. But so far as the facts of this case are concerned, you do not know a thing about them?
A. (No audible response.)

Mr. Singer: That is all.
Mr. Kamber: That is all.

(Witness excused.)

George Maschke, called as a witness on behalf of the defendant Rice, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kamber:

Q. You are a duly licensed dentist, are you, Doctor?
A. Yes.
[fol. 499] Q. How long have you known Jack Katz—not Katz, but Rice?
A. About ten years.

Q. Do you know people that know him?

A. Yes.

Q. Have you discussed his character and reputation with those people?

A. Yes.

Q. And after discussion, as a result of those discussions, what do you say his character, his reputation for truth and veracity is, good or bad?

A. Very good.

Q. And you have an office in that building, haven't you?

A. I have.

Q. On the same floor with Mr. Rice?

A. Yes.

Q. And you occasionally go in there?

A. I do.

Q. You know more or less the plan, that is, the lay-out of his office?

A. I do.

Q. Look at this lay-out on Exhibit B. Would you say that that is the lay-out of his office?

A. I would.

Q. Would you say that that is right?

A. I would.

Mr. Kamber: That is all.

Cross-examination.

By Mr. Singer:

Q. You do not spend your time in Mr. Rice's office, do you? You have your own practice to attend to?

A. I have.

Q. And you mind your own business?

A. I do.

Q. And you do not know all of Mr. Rice's business affairs?

A. Certainly not.

[fol. 500] Mr. Singer: No; that is all.

Mr. Kamber: That is all.

(Witness excused.)

PATRICK O'CONNOR, called as a witness on behalf of the defendant Rice, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kamber:

Q. Mr. O'Connor, are you connected with the Police Department of the City of New York?

A. I am.

Q. What is your position?

A. Patrolman, City of New York.

Q. Pursuant to subpœna issued to you, did you produce certain records?

A. I did.

Q. Have you got them in your hand?

A. I have.

Q. May I look at them?

A. (Witness produces papers.)

Q. I show you these pictures. Did you take these pictures from the Police Department?

A. I did.

Q. Of the City of New York?

A. I did.

Q. Can you tell us without looking at the memorandum that I have annexed to these pictures what these pictures are?

Mr. Singer: Of course, I object to it. He doesn't know [fol. 501] anything about those pictures. He just produced records of the Police Department; whatever is on there is part of the record.

The Court: Unless he has some personal knowledge.

Mr. Singer: He does not know——

Mr. Kamber: Wait just a minute.

The Court: He brought his records, Mr. Kamber. Unless he has personal knowledge, I do not know that he can testify to them. I do not know what they are. They are marked, I suppose he can tell you what they are marked.

Mr. Singer: I am going to concede that everything that is on there was made in the regular course of police business.

Mr. Kamber: Then I offer the picture and record in evidence.

Mr. Singer: And I object to it upon the ground that it has no place in the trial, because it has matters on there which have nothing to do with it; it is not admissible.

Mr. Kamber: Your Honor ruled the other day——

The Court: If you will just wait a minute——

Mr. Kamber: Any picture that was taken where a man——

The Court: I say, just wait a minute until I look at them, and we will do very nicely.

[fol. 502] Mr. Kamber: All right.

The Court: Of course, these have a memorandum on them.

Mr. Singer: There is a date on that memorandum.

The Court: Yes.

Mr. Singer: The bottom line would be the date line.

The Court: But there is nothing on the back——

Mr. Singer: They are pictures of the defendant Katz; there is no question about that.

The Court: Then it is admissible. I do not know what they want to show.

Mr. Kamber: The record——

Mr. Singer: Wait a minute. Please, please.

Mr. Kamber: All right.

Mr. Singer: The fact of the matter is the slip has nothing to do with the picture; the slip which is attached to the photograph showing the number 4/18/29 has nothing to do with it. We have the date here in court.

The Court: All right.

Mr. Singer: The Government concedes he has got a criminal record.

The Court: All right. If they are pictures of Katz, they can offer them. They may want to show how he looked at [fol. 503] various times. They are admissible. Do not mark them, they are public records. Is there anything on the slip?

Mr. Singer: Nothing on the slip. It says "B. 74269."

The Court: It is conceded that they are pictures of Katz?

Mr. Singer: I won't quarrel about that. Sure they are Katz, there is no question about it.

The Court: Then they are received.

Mr. Singer: But about seven or eight, ten pictures of the same man.

Mr. Kamber: I will offer the four for your benefit.

Mr. Singer: Get the four. You have only got three there.

The Court: Go ahead.

Mr. Kamber: Mark two of them.

(Marked Defendant's Exhibit D in evidence.)

Q. Did you, pursuant to the subpœna, produce a prisoner's general criminal record from the Police Department of the City of New York?

A. I did.

Q. I show you this. Were you the one that made a copy from the original record in the Police Department of the City of New York?

A. No, I did not.

Q. Where did you get that?

A. In the Criminal Identification Bureau.

[fol. 504] Q. Is this the criminal record as far as is known of the person named in that paper?

A. To my knowledge, yes.

Q. And what is the name in that paper?

Mr. Singer: Just a minute, I object to it. I object to anything that is on that paper. The paper will speak for itself when it is offered in evidence.

Mr. Kamber: That is right, you and I agree on that.

Mr. Singer: If it ever gets into evidence, and it won't.

Mr. Kamber: All right; that is for the Court to say, not for you.

The Court: Proceed.

Mr. Kamber: I offer the paper in evidence.

Mr. Singer: I ask your Honor to look at it, and your Honor will very rapidly see why it is not admissible.

Mr. Kamber: That is a criminal record——

Mr. Singer: Just a moment. We will have no talk about it.

Mr. Kamber: And it is the copy of an original——

The Court: One minute, what is your objection?

Mr. Singer: The objection is there are statements on there concerning arrests and not convictions.

The Court: That is true.

[fol. 505] Mr. Singer: It is not admissible for that reason.

Mr. Kamber: Then I offer it——

The Court: No.

Mr. Kamber: Excuse me for a minute. I offer it as far as the convictions appear on that record.

The Court: I cannot receive it and cover up the arrests. If you and Mr. Singer will agree on what part to go in, all right, but I cannot submit that paper because it contains matters which are not receivable in evidence. You and he can get together and I will let you read to the jury that part which relates to convictions only, and not the part which states arrests.

Mr. Singer: I will permit you to read every conviction in the record.

Mr. Kamber: Come over here so that you can see what I am reading.

Mr. Singer: I know what is on there.

The Court: Read it so the jury can hear it and Mr. Crooks.

Mr. Kamber: On September 5, 1921, as Harry Katz, Atlantic City, New Jersey; larceny, sentence suspended.

On September 17, 1923, as Harry J. Katz, Atlantic County, New Jersey; grand larceny, indefinite term, Rahway, New Jersey State Reformatory.

As Jack Pearce in 1923, no date, Holmesburg, Pennsyl-
[fol. 506] vania; larceny, sentenced to one year.

On April 5, 1926, as Harry Katz, Los Angeles, California; forgery, three years probation.

On April 18, 1929, attempted forgery, five years in State's Prison, by Judge Rosalski.

That is all.

Mr. Singer: If counsel wants it, the Government will further concede that on August 11, 1923, after a discharge in the County Court, the defendant was returned to Sing Sing for violation of parole and released on November 15, 1933, after serving approximately three months and four days on the violation of parole.

Mr. Kamber: That is all.

Mr. Singer: If your Honor please, this officer has in his possession Government Exhibits 9 and 10, I believe, or 10 and 11, which I think the Clerk ought to have until this case is finished. May I ask you Honor to direct him to turn them over to the Clerk?

The Court: Will you turn them over to the Clerk of the Court?

The Witness: Yes, your Honor.

Mr. Singer: I do not know. There may be more than that.

The Court: Look at it and see what you want.

[fol. 507] Mr. Kamber: I subpœnaed him simply for that record.

The Court: You haven't any concern with this. The Government wants to keep these exhibits here for some purpose.

Mr. Singer: They have been marked in evidence.

The Court: Then they ought to stay here with the clerk. The Clerk will be responsible for them until the case is ended.

Now, that other paper is not in evidence.

Mr. Singer: I am returning them all to him.

The Court: What?

Mr. Singer: To the officer.

The Court: Just keep here what is necessary.

Mr. Singer: Well, at this time, so the record may be cleared up, Mr. Kamber please listen to this. There was a picture offered here taken apparently on June 21, 1933, of the defendant Katz. This was marked as Defendant's Exhibit A for identification; it belongs to the Police Department. Now, according to his Honor's ruling this morning, your Honor ruled it out before, but did your Honor let it go in evidence later?

The Court: Yes; that is a picture of Katz?

Mr. Kamber: Yes, that is the picture that we spoke of. [fol. 508] Mr. Singer: That is the picture that was objected to yesterday, and it was marked for identification. That is in evidence now, I understand. That is all.

The Court: He may take that record of his convictions back.

Mr. Singer: I do not care about that. The man has a record and nobody is denying it.

Mr. Kamber: All right.

Jack Rice, one of the defendants, called as a witness in his own behalf, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kamber:

Q. Mr. Rice, please talk so that this, raise your voice so that this young man here may hear everything you say, that is, the juryman may hear everything you say.

A. Yes, sir.

Q. How old are you?

A. Thirty-four.

Q. You are married?

A. Yes, sir.

Q. But you are not living with your wife?

A. No, sir.

Q. For the last year?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. But you support her?

A. Yes, sir.

Q. How long have you been in business for yourself, Mr. Rice?

A. I have been in business for myself since about 1920. [fol. 509] Q. Will you tell this jury what business you have been in since 1920?

A. In 1920, I went into the jewelry engraving business, and since then——

Q. Where was that?

A. That was at 1368 Broadway.

Q. Then how long were you there?

A. I was there about two years.

Q. Then what did you do?

A. I moved to 1454 Broadway.

Q. Were you in the jewelry engraving business there?

A. Yes, sir.

Q. Were you ever in business in operating any stores or places of business?

A. After that I was, yes.

Q. Where was that?

A. I had a store at Miami Beach, Florida; retail store.

Q. For how long?

A. 1927, 1928, 1929 and 1930, during the winter.

Q. What did you do during the spring and summer?

A. I had a store in Asbury Park during the months of July and August, and a store in Atlantic City from August until November,

Q. For how many years were you doing that?

A. During the same period of years.

Q. How long have you been in the place of business at 42nd Street and Broadway?

A. I have been there about ten years.

Q. What has your business been there?

A. It has been jewelry engraving and selling jewelry.

Q. You heard the testimony of this man Katz, didn't you?

A. Yes.

[fol. 510] Q. I ask you categorically whether, first referring to this batch of $20 certificates which are Government's Exhibit 4, did you ever see these notes before?

A. No, I have not.

Q. Did you ever deliver them to Mr. Katz?

A. No, I did not.

Q. Did you at any time have them in your possession?

A. Absolutely not.

Q. Now, referring to Exhibits 1 and 2 which are in evidence as Government's Exhibits 1 and 2, did you ever see these notes before?

A. No, I did not.

Q. Did you ever deliver them to Mr. Katz?

A. No, I did not.

Q. Did you ever have them in your possession?

A. I have never had them in my possession.

Q. Did you ever see them?

A. No.

Q. Referring to Government's Exhibit 6, which are six notes, did you ever have them in your possession?

A. No, sir, I did not.

Q. Did you ever deliver them to Katz?

A. Absolutely not.

Q. Did you ever deliver them to anybody else?

A. No.

Q. Did you ever see them before?

A. I have never seen these bills before.

Q. Referring to the $100 certificates, Government's Exhibit 7, did you ever have this certificate in your possession?

A. No, I did not.

Q. Did you ever deliver it to Katz?

A. No, I did not.

[fol. 511] Q. Did you ever deliver it to anybody else?

A. No, I did not.

Q. Did you ever see it before?

A. No.

Q. Referring to Exhibit 5, which the Government referred to as the Nat Lewis $100 bill, you saw this one before?

A. Yes, I saw that.

Q. Now, will you state the circumstances under which you saw that?

A. I saw that in Mr. Lewis' store.

Q. All right. Did you have it in your possession?

A. Yes.

Q. Did Mr. Lewis give it to you?

A. Yes.

Q. For how long a period did you have it?

A. I had it for practically the balance of the afternoon.

Q. Tell the circumstances under which you had this note, Mr. Rice, please.

A. I received a telephone call from Mr. Lewis, it was either on Monday or Tuesday following Christmas, asking me to come down to his store, that he would like to speak to me. I went down to his store and he gave me this hundred dollar bill.

Q. What did he say?

A. He said, "I believe you gave me that."

Q. What did you say?

A. I said, "Well, how can you say that?" And he said, "You gave it to me several days ago," and I said, "No," and we had quite a little controversy over it. I had given him a $100 bill before, and he asked me how I got it, and I told him I had taken it in trade in the office, cashed it in.

Q. You told him that you had taken a hundred dollar bill in trade?

[fol. 512] A. I had taken a hundred dollar bill in trade at the office, but that I was sure that this was not mine. So he says, "Well, you will have to make good for it." So I said, "Mr. Lewis, you know me for a period of years. We have trusted each other. If you say this is my hundred dollar bill, I wouldn't offend you, I wouldn't even argue with you. I will pay you for it. I will take it, and in the

event that anybody that I would think had given me this, I would keep it in the office, and if they should ever come in, I would question them about it." So he said, "All right," and he handed me the bill. I gave him $50. I said, "That is practically what I have got in my pocket," so he said, "All right; you can pay me the balance later."

Q. Then he gave you the bill?

A. Then he gave me this bill.

Q. You had this bill in your possession for a whole afternoon, you say?

A. Yes, sir.

Q. And did you show that bill to certain other people?

A. I showed it to quite a few people.

Q. A Mr. Simmons was one of them?

A. Yes, sir.

Q. Did you show it to Mr. Simmons?

A. Yes.

Q. Did you show it to Mr. Simmons' cashier?

A. I went to lunch, or I went for mid-afternoon coffee, and while I was there I asked Mr. Simmons, "Have you had any trouble with any bills that I have cashed here, especially one last Christmas eve? I recall I had cashed a $100 bill." And he said, "No, not that I know of." And I said, "Well, look at what I got here. I took this bill and I have [fol. 513] been blamed for it, it is a loss of $100." So Mr. Simmons said, "Let me look at it," and, "I would like to show it to the cashier, to the girls in the place." I said, "All right," and I handed it to Mr. Simmons.

Q. All right. And they all looked at it?

A. Yes.

Q. You returned that bill again to Mr. Lewis, didn't you?

A. Yes, when I got back to the office late that afternoon, Mr. Lewis called me and asked me if I wouldn't return the $100 bill, so I said, "What am I supposed to do?" And he said, "I have to return it to the bank."

Q. So you gave him it?

A. So I brought it back to him.

Q. You gave him back the bill?

A. Yes, sir.

Q. And that was the last you saw of it?

A. That is the last.

Q. And that bill, was it in the same condition as it is now, marked "Counterfeit"?

A. Yes. It didn't have this writing on it.

Q. I mean, but there was an expression "Counterfeit" marked on the bill?

A. Yes.

Q. Did you subsequently pay Mr. Lewis any more money on that hundred dollars that you got?

A. Yes, I paid him $25 more.

Q. That is right, you gave him $25 more. You gave Mr. Lewis $75 on this particular bill?

A. Yes.

Q. You have done business with Mr. Lewis for a number of years?

A. I have.

Q. You have also done some work for him?

A. He was a customer of mine; Mr. Lewis trusted me with merchandise.

[fol. 514] Mr. Kamber: Your witness.

Mr. Singer: I would like to ask the other counsel if they desire to examine before the United States Attorney does.

The Court: All right.

Mr. Crooks: I haven't any questions.

Mr. Wegman: I haven't any questions.

The Court: All right; proceed.

Cross-examination.

By Mr. Singer:

Q. Mr. Rice, you didn't tell us whether you knew Katz or not.

Mr. Kamber: He wasn't asked, if your Honor please.

Q. That is true, you weren't asked, but that is pretty important, isn't it?

A. I do not know if is it or not.

Q. Is that the way you feel about it?

A. Yes.

Q. You do know Katz, don't you?

A. I know who Katz is, yes.

Q. He has been at your office?

A. He has.

Q. You have met him on several occasions at least?

A. I met him on a few occasions.

Q. You met him in Roth's Restaurant twice?

A. Yes.

Q. He came there pursuant to a telephone call he made to you?

A. That is right.

Q. You talked with him at Roth's Restaurant, didn't you?

A. Yes, about three minutes.

[fol. 515] Q. You talked with him twice in Roth's Restaurant?

A. Yes, both times very briefly.

Q. Answering my question directly, was there anything said over the telephone between you and Katz about a large bottle of Ginger Ale?

A. There was positively not.

Q. Did the words "large bottle of Ginger Ale" mean anything to you as far as Katz was concerned?

A. I wouldn't know what he was talking about.

Q. And if he had mentioned "large bottle of Ginger Ale," that fact would be outstanding in your recollection; you would remember it?

A. Positively.

Q. And he never said it?

A. Absolutely.

Q. Do you say that you didn't hear it, or that he never said it?

A. He never said it to me.

Q. This telephone conversation that you had with Katz, that actually took place?

A. He telephoned me on two or three occasions.

Q. I mean the telephone call before you went to Roth's Restaurant on these two days.

A. Yes.

Q. And on both occasions were you the only one that talked to Katz over the telephone?

A. No.

Q. Who talked to him besides you?

A. Mr. Lee.

Q. You knew Lee before you hired him, didn't you?

A. Yes.

Q. You knew all about him?

A. Yes.

Q. You knew that Lee had had certain difficulties in his life before you met him?

A. I did.

[fol. 516] Q. And when you knew Lee's difficulties, incidentally you knew Katz' difficulties with the law?

A. Afterwards I did, yes.

Q. That is, Lee, as an employee who truthfully should have been grateful to you, told you that Katz and he had formerly been together in Sing Sing or Dannemora, or wherever it was?

A. That is right.

Q. In spite of the fact that at that time you knew that Lee had formerly been convicted and Katz had formerly been convicted, nevertheless you went to a restaurant to meet Katz pursuant to this telephone call?

A. Right.

Q. Not only once, but twice?

A. Yes.

Q. There were other people in that office that came to see you frequently who had had similar unfortunate brushes with the law, shall we put it that way?

A. Not to my knowledge.

Q. Well, Dapper Don Collins was there the night of your arrest?

A. I didn't know him by the name Dapper Don Collins.

Q. You knew Dapper Don Collins was a notorious figure in the criminal underworld, he had been convicted at least twenty times?

A. I know it now.

Q. As a matter of fact, you knew that Dapper Don Collins was considered the outstanding thief of America?

A. I did not.

Q. And that his record not only extended to the United States but to Continental Europe?

A. I did not.

[fol. 517] Q. And that his exploits in escaping from Devil's Island had been written up in almost every newspaper in the world, and you tell me now you never heard of Dapper Don Collins?

A. I had heard of him, but I did not know him at that time.

Q. The other man with Dapper Don Collins, this man called Fat, you knew him?

A. I didn't know any man by the name of Fat.

Q. There was another man there the night that you were arrested?

A. He came up to see me; he was not with Collins.

Q. He had been there frequently?

A. No, he had not.

Q. This man Fat you know had had some unfortunate brushes with the law, you knew very well that he was a man who was considered one of the best safe blowers in the country?

A. I knew nobody by the name of Fat.

Q. But there was this man in your office the night you were arrested?

A. Who is this man Fat? I do not know him.

Q. What was the name of the man that was in your office the night that you were arrested?

A. His name was Eddie Macy.

Q. Which man do you describe as Eddie Macy?

A. He was a very large fellow.

Q. Very husky?

A. Yes.

Q. You knew him as Eddie Macy?

A. Right.

Q. The fact of the matter is you were told the morning you were arrested that this man was Fat Schiller, and that he was a safe robber?

A. That is right, the night I was arrested.

[fol. 518] Q. Tell me Rice, for a man running a legitimate business, where we find that your office seems to be sort of a meeting place for not only ordinary criminals but pretty outstanding criminals, you wouldn't say that those men came there in pursuance of legitimate business, would you?

A. Eddie Macy came there for absolutely legitimate business.

Q. To buy or sell jewelry?

A. He came there to get my advice on a pawn ticket that afternoon, and he came there with a diamond watch that night to have me repair it.

Q. Did you know anything about Eddie Macy, or whatever you call him, did you know where his place of business was?

A. No.

Q. The fact of the matter is you didn't know whether he stole the watch in one of his safe blowing exploits, or whether he had gone out and bought it?

A. I would not have bought it if I had known otherwise.

Q. I didn't ask you whether you would have bought it, but I say you didn't know.

A. I wasn't interested.

Q. That is correct. How many times had Eddie Macy been in your office?

A. At the most three or four times.

Q. And those three or four times in connection with jewelry?

A. Yes, or engraving.

Q. That is right. Now, was it in connection with the removing of any engraving on a piece of jewelry and the placing on that piece of jewelry of another bit of engraving?

A. No.

[fol. 519] Q. Was it in connection with placing some engraving on the jewelry itself?

A. Yes.

Q. New jewelry or old jewelry?

A. Brand new jewelry.

Q. Did you ever ask this man Macy—I will withdraw that. Of course, Rice, being in the business since 1920 yourself, and having had these various, shall we say nationwide experiences, at least along the Eastern coast, you are pretty well acquainted with pretty nearly everybody in the jewelry business of any importance?

A. Uptown I was.

Q. Well, in addition to uptown, you had had a store in Miami, a store during the winter, and then you had your store at Asbury Park and Atlantic City during the summer and late fall, and you had this engraving business in New York for many years. And during that time you had every opportunity, didn't you, in all fairness to all of us, you had every opportunity to become pretty thoroughly familiar and acquainted with everyone almost everyone along the Eastern coast in the jewelry business?

A. No.

Q. You say you did not?

A. Not along the Eastern coast.

Q. Well, at least in the City of New York?

A. In New York, yes.

Q. This man Eddie Macy, you didn't know that he had any connection in the jewelry business, and you didn't take pains to find that out?

A. No; I wasn't interested.

[fol. 520] Q. This man Dapper Don Collins, by what name did you know him?

A. I knew him by the name of Arthur Collins.

Q. What business did he tell you he was in?

A. He was at that time interested mainly in some sort of—he was trying to interest me in some sort of——

Q. Invention, wasn't it?

Mr. Kamber: Let him answer——

The Court: Please.

The Witness: In some sort of liquor proposition?

Q. It was a chemical formula of some kind for aging whiskey?

A. Yes.

Q. It was an invention, I wasn't misleading you when I said invention, was I?

A. No.

Q. If you differentiate, a chemical invention——

A. Mr. Singer, he wasn't interesting me in the invention. He was interesting me to finance something about liquors.

Q. You were going to invest money, or he was trying to get you to invest money in some means of legalizing this liquor, which, when sold, would age rapidly by some chemical process?

A. That is right.

Q. I might say to you that that wasn't illegal at all because it was after Prohibition. This was in December, anyway, after Prohibition had been repealed?

A. Right.

Q. Tell me when you first met Dapper Don Collins?

A. I met him sometime in September.

[fol. 521] Q. Where did you meet him?

A. I met him in Sennet's on 50th Street and Seventh Avenue.

Q. Some mutual friend introduced you to him?

A. Yes.

Q. He saw you quite frequently.

A. No.

Q. He tried to interest you in the proposition which we have been talking about, this aging whiskey?

A. He spoke about it then, and I wasn't interested whatsoever.

Q. Do you say, Mr. Rice, that it was by the purest coincidence that on the night of your arrest this notorious international thief and this famous burglar were together in your office? Was that a pure coincidence?

A. It was, yes, sir.

Q. Was that by appointment?

A. That was a coincidence, really. I explained that to you in your office and offered proof of the fact that had it been any other time of the day or week you could have found people of social prominence there.

Q. That is correct.

A. The same as these notorious people.

Q. That is correct. In other words, had it been any other time of the day, there would have been legitimate people there?

A. Yes, sir.

Q. At this time of the day, which was rather late in the evening——

A. I say any time of the week.

Q. After business hours it was unfortunate that these thieves were there?

A. I was closing up; it was six o'clock.

[fol. 522] Q. In other words, if I understand you correctly, your legitimate customers came in during the day, during the regular business hours, and then these people got there later in the evening, isn't that correct, Mr. Rice? I think you meant that if you didn't say that.

A. No, I didn't mean that; I didn't even say that.

Q. What you meant was it was very unfortunate that the two of them happened to be there together?

A. It wasn't unfortunate.

Q. You do not think it was unfortunate when you are about to be arrested on a counterfeiting charge that in your office there should be at least three people there, yes, including your own employee Lee, who had had rather disastrous experiences with the law and had been convicted of

felonies? You do not think that is unfortunate, or do you think that is fortunate?

A. It is a coincidence.

Q. It is an unfortunate coincidence, isn't it?

A. Yes.

Q. And that never could have happened at any other time except by accident at this time?

A. Purely by accident, absolutely, like I explained to you in your office, that had it been at any other time of day, any other particular time, or any other night, not that night, there could have been socially prominent people there, as well as, which I found out later, were people with bad records, and I had a list in my pocket to prove to you.

Q. That is, you did business with legitimate people?

A. Yes.

[fol. 523] Q. Well, I do not deny that at all, and I will say so now. As far as that is concerned, Mr. Rice, you have done business with a lot of legitimate people?

A. I cannot segregate them, Mr. Singer.

Q. I say, you have done business with legitimate people?

A. When a person comes in my office, I do not ask him if he has a record? Business does not warrant that.

Q. The jewelry business does warrant it?

A. It just does not warrant it, no business——

Q. Pardon me, the jewelry business, according to your radical theory of it, does not warrant any questions on your part about a man's background, or at least the background of articles he is about to sell, according to you?

A. I do not buy anything from strange people that come in the office.

Q. You were about to buy something that night, were you not?

A. I was not buying, I was not about to buy; I wish to correct you on that. I had no intention of buying.

Q. What was Macy up there for, or Fat, or whatever you call him?

A. I gave him my appraisal on a watch, and he wanted to have a new dial on it, as it was badly discolored.

Q. Now, you knew Katz had a record?

A. Yes.

Q. You knew he had had more than one arrest, had been back up in Sing Sing for violation of his parole?

A. I learned that some time later.

Q. You knew that about the time you met him, did you not?

A. No, I did not.

Q. The fact of the matter is that you met him on March [fol. 524] 1st of last year, or around that time?

A. No, I did not.

Q. Is it your statement now that the first time that you met him was not in March?

A. No, it was in June.

Q. All right. Let us make it June, then. But you knew after you met him, when he went back to Sing Sing for violation of his parole?

A. No, I did not.

Q. He disappeared and you didn't know what happened to him?

A. Yes; I didn't care what happened to him. I didn't even know him then.

Q. But you had met him?

A. I had met him and Mrs. Katz.

Q. And this employee of yours, Lee, he introduced you to Katz?

A. Yes.

Q. What does Lee do in that office?

A. He helps me out.

Q. This ex-convict, as your lawyer has been calling him and everybody else, what was he doing in your office?

A. He answers the telephone; he acts as transfer clerk, and so forth——

Q. He takes care of the books?

A. He takes care of the books sometimes, and makes himself generally useful, going out on special errands.

Q. He also acts as your good man Friday, and walks around with you when you have social engagements or want to meet people?

A. Once in a while, yes.

Q. This boy Phil who testified here this morning, I do not remember his last name——

A. Aaron.

Q. (Continuing:) Phil Aaron?

A. Yes.

[fol. 525] Q. He does engraving work as well as yourself?

A. Yes, sir.

Q. Tell me this, Rice, an engraver works with cutting tools, does he not?

A. Yes, sir.

Q. In the ordinary course of your business you cut on pieces of metal, gold, silver, and platinum, I suppose, impressions which are of a geometric type, particularly for initials set-up in diamond shapes or heart shapes, isn't that correct?

A. Yes.

Q. And you cut out in pieces of metal various designs of all types and descriptions to meet the whims and fancies of your customers?

A. What do you mean by "designs"?

Q. Well, I mean designs with initials and things like that.

A. Strictly initials, no ornaments.

Q. Scroll work?

A. No, ornament work.

Q. Scroll work?

A. Scroll work is ornament; I do not do that.

Q. You take a fancy letter like S, take a curved letter like S, and the lines that go around it?

A. Yes.

Q. You never make such things?

A. That is out of date.

Q. You have in the past?

A. I have in the past, such as cross-shading.

Q. And not only does your engraving work, including this cross-shading, requires lines to be cut heavy or way down, but some lines thin, some lines heavier, to accentuate the letters?

A. Right.

[fol. 526] Q. And also the ordinary engraving work that you do is fine, delicate work on the inside of watch cases, on the inside of rings, and all such types of work?

A. Right.

Q. It requires a good keen steady engraving hand, if that is the word for it?

A. Yes.

Q. You have put in some, I think it is 14 years you have been in the business, since 1920?

A. Yes.

Q. Do you do acid etching work as well?

A. No.

Q. You have studied that in the line of your business?
A. No, I haven't.
Q. There is such a thing as acid etched?
A. That is a separate trade.
Q. In the jewelry business as well?
A. No.
Q. Nothing like that in the jewelry engraving business?
A. No. There was, many, many years ago, but it is very expensive, on silver; they do not use it any more.
Q. These engraving tools, were they in that office as well?
A. Certainly.
Q. Did you do any plate engraving for, let us say, stationery work?
A. No.
Q. You know how that engraving is done on copper or steel plates?
A. Yes.
Q. You never did any work like that at all?
A. No; you are referring for what purpose?
Q. For the printing of names on stationery, engraved stationery?
A. No.
Q. Either for yourself or anybody else?
A. No, but I make plaques and things of that sort.
[fol. 527] Q. By "plaques" you mean monuments?
A. No, testimonial plaques to be used as trophies and for amusements.
Q. You mean the ordinary life membership in some organization, maybe a small sheet of gold, plate of gold, with some engraving on it, "In testimony of honorable service," to some club or something like that, where a person is given a life membership?
A. No, I do not mean that.
Q. Then what do you mean by a plaque?
A. I mean a large presentation plaque for a golf trophy, given to winners for a number of consecutive years.
Q. You mean in a sort of wooden frame with metal on top of it?
A. No, it is attached to large humidors or wall brackets.
Q. It is usually of silver?
A. No.
Q. What is it usually made of?

A. Either of brass, copper or white metal, or silver, when they can afford it.

Q. And it might have a little ornamental engraving on it?

A. No; it is mostly plain, just the words engraved on.

Q. You do that work yourself?

A. I do that, certainly.

Q. Where did you study the art of engraving?

A. I learned my trade in the same kind of a shop that I conduct now.

Q. You worked for somebody?

A. Yes.

Q. You have never gone to any engraving schools, I do not know whether there are such schools, not being familiar with the trade myself?

A. There are.

[fol. 528] Q. You have never gone to such a school?

A. No.

Q. You have learned yourself in the school of experience, as they say?

A. Yes.

Q. I assume it was also unfortunate on your part that when the agents asked you whether you had ever met Katz in Roth's Restaurant, that you said you never were in Roth's Restaurant and never saw Katz there?

A: When was that?

Q. The morning that you were arrested, or the night that you were arrested.

A. Mr. Godby asked me, showed me a picture. I told him I wasn't interested, but I asked him why was I there, and he didn't tell me.

Q. But the following morning when I examined you in my office, you have no complaint to make about the way you were examined in my office, have you?

A. No, it was very brief.

Q. Nobody abused you?

A. No.

Q. Or bully-ragged you?

A. Nobody abused me or bullied me any place.

Q. That is so; I mean you were treated as a gentleman should have been treated, no matter what offense you may or may not have been charged with?

A. That is right.

Q. And you were asked, and I asked you, Mr. Rice, why did you tell the agents that you had not met Katz in the

restaurant, and you said to me, "Mr. Singer, that was unfortunate at that time. I did not know what to say, so I said I did not see him." Didn't you say that?

A. I didn't say that.

[fol. 529] Q. What did you say? You told me——

A. I told you at that time I wasn't interested; all I was interested was to find out what I was charged with, and I asked you at that time what I was charged with, which you didn't tell me.

Q. And you never made any explanation why, although you knew Katz, you denied having met him in the restaurant?

A. I didn't deny or I didn't admit.

Q. Tell me now what your explanation is on the witness stand now for denying that you knew Katz, or that you had seen him in Roth's Restaurant.

A. I wasn't interested at the time I was asked to admit or deny; I was merely interested in what I was there for.

Q. Mr. Rice, I would like to help you that way, but I must insist on your telling me what is your explanation now for denying then that you had met Mr. Katz in the restaurant?

A. I had no reason for it.

Q. You simply denied it out of pure pique?

A. I did not deny it.

Q. That is a different answer. You say now you never denied it?

A. And I didn't admit it.

Q. You didn't admit it?

A. No.

Q. Well, then tell me what is your explanation for not admitting that you had met Katz?

Q. Because I wasn't interested. I was only interested in knowing what I was there for.

Q. The following morning I questioned you about counterfeit money, didn't I?

A. Yes—no, you didn't question me——

[fol. 530] Q. No?

A. About counterfeit money.

Q. Did Mr. Godby question you about counterfeit money?

A. The following morning.

Q. The night before in the Police Station?

A. No.

Q. Nobody asked you a word about counterfeit money?

A. Absolutely not.

Q. The first time you learned about counterfeit money was when you were arraigned before the United States Commissioner and heard you were charged with passing counterfeit bills?

A. When I asked him, that is the first time I knew what I was charged with. You didn't even tell me what I was charged with.

Q. Take one of these bills, take this Government's Exhibit 5 in evidence. That is the bill I think you testified that you showed to all these people, or at least to one man, and a cashier?

A. Yes.

Q. Mr. Lewis was on the witness stand day before yesterday, is that correct?

A. Yes.

Q. Or was it yesterday? I think it was the first day of the trial?

A. Right.

Q. Monday. Your attorney asked him some questions. Had you told your attorney before Mr. Lewis was examined that you had received that note from Lewis and had gone out and showed it to certain people?

A. Had I told him that?

Q. Yes.

A. I explained the whole circumstance.

[fol. 531] Q. But I mean your counsel knew that incident; that incident was known to your counsel?

A. Yes.

Q. Do you know anything about how one of these notes are made?

A. No, I don't.

Q. You don't want to tell me you do not know anything about it?

A. I absolutely do.

Mr. Kamber: Excuse me for a minute. I do not want to object to this except that my friend wishes to charge now that he is a maker of plates, he has knowledge of the plates, he should have charged that in the indictment, and any evidence with reference to that—not that I am afraid of it at all, but any evidence with respect to that is highly inad-

missible. The indictment in this case charges the passing of certain counterfeit bills on various persons.

The Court: Any knowledge that he might possess with reference to the bills that were passed is admissible.

Mr. Kamber: That is correct, but saying——

The Court: That is all he was asking.

Mr. Kamber: I didn't understand it. I understand he is now going into the proposition about plates.

The Court: He is asking him about this bill; any knowledge that this witness had he may inquire about.

[fol. 532] Mr. Kamber: I am perfectly willing, he can go ahead as far as he wants.

The Court: The charge here is definite and certain, but in the prosecution of this case any knowledge that he might have with reference to the thing passed is admissible.

Q. Those bills, or all money is printed somewhat like a newspaper or a card, the ordinary business card, you know that?

A. I do not know anything about how it is printed.

Q. You know that this is made, this particular bill there, Government's Exhibit 5, is made on a printing press from an engraved plate; you know that, don't you?

A. I do not know how they are made.

Q. Well, you can look at it and see that it is an ordinary transfer printing job from an engraved plate?

Mr. Kamber: I object to it, if your Honor please. The man has testified twice he doesn't know how it is made.

The Court: He can ask him to look at it.

Mr. Kamber: Well, all right, but it seems to me that that has been asked two or three times.

The Court: All right; he can ask him to look at it.

(Last question repeated by the reporter.)

[fol. 533] A. I do not know.

Q. You know, don't you that money is printed from engraved plates?

A. Yes.

Q. And you know that bill which is before you was printed from an engraved plate?

A. Mr. Singer, as far as money being printed from plates, or the knowledge of the engraving on plates, there is as much difference between that and the engraving on jewelry

or a monograph or lettering as there is between night and day. I do not know a thing about how money is made; I have never worked in a place where money has been made.

Q. You see on that bill that there is engraving?

A. I take for granted that there is.

Q. Of letters and figures, numerals, isn't that correct?

A. Yes.

Q. That is just like, except for the type of letters, the engraving on watches and jewelry?

A. No, it is not.

Q. You see that letter "T" in the word "The" on Government's Exhibit 5?

A. Let me see it.

Q. Just take that letter "T". The engraving on the plate for that "T" would be no different than engraving on a watch of the letter "T"?

A. A good deal different.

Q. How would it be different?

A. The cuts would be different, the cutting would be different.

Q. How would the cutting be different?

A. I do not know.

Q. Would it be cut so it would take ink, you mean?

A. No, I do not think so.

[fol. 534] Q. Would it be cut as a sort of negative to be printed on a positive?

A. That I do not know.

Q. You know the difference between those?

A. I do not know.

Q. Oh, yes, Mr. Rice.

Mr. Kamber: I object.

A. No, I do not know.

Mr. Kamber: Wait a minute, Mr. Rice.

The Court: He has answered.

Mr. Kamber: I do not think that is right.

The Court: What is it?

Mr. Kamber: He says. "Oh, yes, I think you do."

The Court: All right. If you had objected——

Mr. Kamber: I object to it. I do not think it is right.

The Court: All right, but you are objecting after the event. Don't argue with the witness, ask questions. Go ahead. Do not argue, just ask questions.

Q. You never gave any bills to Kett, did you?

A. Positively no.

Q. And you never went to Brooklyn, you know you didn't tell us that on your direct examination?

Mr. Kamber: He wasn't asked.

Mr. Singer: He should have been.

[fol. 535] Mr. Kamber: You ask him.

The Court: Never mind that. The jury will disregard that. You try your end of it and let Mr. Kamber try his end.

Q. You didn't tell us whether you had been to Brooklyn with Mr. Rice over at Elton Street at Piccione's house.

A. With Mr. Rice?

Q. With Mr. Katz?

A. No, I have not.

Q. Were you there?

A. I was not there.

Q. Did you have anything to do with that?

A. Absolutely not.

Q. Did you tell Katz that this ring taken from Piccione's had been offered for sale, but there was trouble because it was offered to the man from whose wife it was taken?

A. I know nothing about that.

Q. I didn't say you knew. I only asked you whether you told that to Katz?

A. Told what to Katz.

The Court: Read it.

(Question repeated by the reporter as follows:

"Q. Did you tell Katz that this ring taken from Piccione's had been offered for sale, but there was trouble because it was offered to the man from whose wife it was taken?")

A. Positively not.

Q. And the ring that came from Zimmerman, did you tell Katz that he got stuck on the ring, it wasn't worth [fol. 536] more than $200?

A. Positively not.

Q. That you couldn't give him his share of the transaction?

A. Positively not.

Q. Did Katz ever receive any money from you at all?

A. Nothing at all.

Q. Did he ever buy any jewelry from you?

A. No, but he had given me an emerald to have a mounting made.

Q. Had he received his emerald back?

A. No.

Q. Have you still got it?

A. Yes.

Q. Did you turn it over to the police?

A. No.

Q. Why didn't you turn that emerald over to the police, now that you have learned that Katz had a criminal record, that emerald may have been stolen?

A. I have had it in my possession.

Q. Why haven't you turned it over to the police?

A. I saw no reason for it.

Q. Well, now, you took an emerald from a man that you knew was a thief. Katz didn't look like he had enough money to have emeralds or other precious stones?

A. I wasn't interested in that.

Q. You are not interested in where it comes from?

A. I was interested in making the mounting.

Q. You are not interested in where these people get the jewelry as long as you make the mounting?

A. He told me it was his wife's.

Q. A moment ago you said you weren't interested where he got it, and now you say he told you it was his wife's.

A. He told me it was his wife's.

[fol. 537] Q. Then you did ask where he got it?

A. No; he told me.

Q. If he hadn't told you it would have made no difference?

A. No.

Q. You would still have taken it and made the mounting?

A. I would have made the mounting for it, yes.

Q. As a matter of fact, do you mount stones, precious or semi-precious stones, that come to you from any source whatever and make mountings for them?

A. Yes.

Q. Katz is not in the jewelry trade, as far as you know, is he?

A. No.

Q. This man Macy, was he in the jewelry trade?

A. No.

Q. Wasn't it entirely possible that maybe, without your knowledge, these thieves were using you to reset diamonds that had been taken, diamonds or other precious stones, that had been stolen and removed from the original mountings, for the purpose of destroying the identification?

A. That I couldn't say.

Q. That is highly possible, isn't it?

A. I do not know.

Q. You do not know and you never made inquiry about it?

A. No.

Mr. Singer: That is all.

Q. I might just ask you one question more: As I understand you, this watch that this man Fats brought in, or whatever you call him, Macy or Marcy, that was brought [fol. 538] in to have a new face put on it, wasn't it?

A. A new dial.

Q. Well, I called it face, I am sorry; I meant dial. And you showed that watch to Godby and Fitzgerald?

A. I didn't show it to them, no.

Q. They saw it?

A. Yes.

Q. They examined it?

A. Yes.

Q. And I think you agreed with them that it never needed a new dial, didn't you?

A. Absolutely not.

Q. It did need a new dial?

A. I cleaned the dial for him.

Q. It had been cleaned before they saw it?

A. I had just finished cleaning it then.

Mr. Singer: That is all.

Mr. Kamber: That is all.

Mr. Wegman: There are just two questions I would like to ask this witness:

The Court: Go right ahead.

Cross-examination.

By Mr. Wegman:

Q. Mr. Rice, did you ever know Mr. Berger before this case started?

A. No, sir.

Q. Never had seen him?

A. No, sir.

Q. Did Katz at any time at all, when he was in your company, or when he spoke to him about any matter whatsoever, even mention the name of Berger?

A. No.

Q. You never heard that name?

A. No.

Mr. Wegman: That is all.

Mr. Kamber: If your Honor please, I at this time—I do [fol. 539] not expect to finish as early as this. I had one man and he walked out on me. While I was examining this witness, you remember the man I had stand up here, I want to call that man to give testimony, and I would like to put it in, if I may, say at two o'clock or two-thirty. It won't take more than ten minutes.

The Court: Where is the man? Have you got him here?

Mr. Kamber: Not just now.

Mr. Singer: I have a feeling that we can be through with this case in another fifteen minutes, from the way it looks to me. I have only got about five minutes in rebuttal, and I do not want to wait until two-thirty.

Mr. Kamber: It is a matter of importance.

The Court: It was important that you hold him here. You had him.

Mr. Kamber: I appreciate that; I did not think he was going to go out.

The Court: You have no man here?

Mr. Kamber: No, he walked out on me. They can be here at two o'clock.

The Court: No, we are not going to recess until two o'clock.

Mr. Kamber: I would not ask for that. I only ask for leave to put him on when he comes.

The Court: Find him. Where is he? He was here? [fol. 540] Mr. Kamber: He was here. He is the manager of a restaurant.

The Court: I understand all that, he was here. I thought Mr. Wegman had some witnesses.

Mr. Wegman: May I ask your Honor for a moment's indulgence? I am just trying to find out what happened to some people who were supposed to be here.

The Court: You have all had plenty of time. If you have got them here, I will let you call them. You have all had plenty of time.

We will take a short recess.

(Short recess taken.)

HERMAN WASSENBERGER, called as a witness on behalf of the defendant Berger, having been duly sworn, testified as follows:

Direct examination.

By Mr. Wegman:

Q. Mr. Wassenberger, what is your occupation?

A. Surety and bail bonds.

Q. Did you write the bond for the defendant Harry Berger in this case?

A. I did.

Q. Do you recall the day several weeks ago when the defendants in this case were arraigned before Judge Inch for pleading on this indictment?

A. I do.

[fol. 541] Q. Do you remember that Judge Inch set bail——

A. I wasn't in the court when he set bail.

Q. You knew bail had been set?

A. Yes.

Q. You came to this court in connection with writing the bond for Mr. Berger?

A. Re-writing the bond.

Q. You had written it at the time he was held by the Commissioner?

A. Yes.

Q. Pending a hearing which was never had?

A. Yes.

Q. At that time you went over to the detention room in this building in which the prisoners were held, did you not?

A. I did.

Q. Will you tell his Honor and this jury what, if anything, Jack Katz—you know Jack Katz, do you not?

A. I do not.

Q. You know who is?

A. Yes.

Q. When I say Jack Katz, you know who I am referring to?

A. I do.

Q. When you went over to the detention room in this building that day, please tell his Honor and this jury what, if anything, Jack Katz said to you in regard to the defendant, Harry Berger.

A. I was called down to rebail the man. When I got here I refused to rebail the two girls, due to the fact that they——

The Court: Never mind about why. You refused to rebail them.

The Witness: I got permission to go into the pen and explain why I did not want to bail them out, and in [fol. 542] an argument between Mr. Berger and the two girls, and Mr. Katz was in the other end of the pen, and he said, "Go on and bail them out. They have nothing to do with this case anyway." That is all that took place.

Q. Was that in reference to Harry Berger he made that statement?

A. It was in reference to three of them.

Q. To the three of them. *A.* Harry Berger was included.

A. Yes; I refused to bail Berger as well.

Cross-examination.

By Mr. Singer:

Q. Do I understand he just said, "Why don't you bail the girls out? They have got nothing to do with it"? Isn't that what he said?

A. No, he said this defendant——

Q. You just said that before, Mr. Wassenberger. Did you say that, that he said, "Why don't you bail the girls out? They have got nothing to do with it?"

A. That is exactly what he said, and he added——

Q. Wait a minute. Now you say he added something.

A. Yes.

Q. What did he add? "Berger has got nothing to do with it"?

A. Berger refused to get bailed out unless the girls were bailed out.

Q. I didn't ask you that. You say he added something. What was it that he added?

A. "They are all innocent."

[fol. 543] Q. He meant Rice too, because Rice was in there?

A. He might have.

Q. And he mean't Jones——

Mr. Kamber: I object to that; there is no evidence that Rice was there at all. As a matter of fact, Rice wasn't there. He pleaded three days afterward.

Mr. Singer: That happens not to be so. You have got the wrong date.

Mr. Kamber: I object to anything about Rice.

The Court: One moment. Was Rice there?

The Witness: I really don't know. There was about six or seven there.

The Court: You do not know.

Q. You haven't told us all about that incident.

A. Anything you want to know.

Q. You haven't told us there was an argument between Berger and Katz; there was quite an uproar in there, was there?not?

A. There was.

Q. Berger accused Katz, and said Katz was going to go into court and testify against him?

A. I did not hear that.

Q. Berger threatened Katz?

A. He did not.

Q. You heard Berger threaten Katz, didn't you?

A. I heard an argument between Berger and the girls.

Q. You just said there was an argument between Katz and Berger.

A. No, I did not.

[fol. 544] Q. As a matter of fact, now that we are talking about it, since you brought it up, didn't you bail those girls out for Berger?

A. I did.

Q. Didn't you tell me, Mr. Wassenberger, and I am sorry you brought this up, but as you took the stand you are going to be bound by it, didn't you tell me that the only reason

that you wanted to get those girls out for Berger was because you felt if you could get them out on bail they would not say anything against Berger?

Mr. Wegman: I object to that. That certainly has nothing to do with the defendant in this case. It is an improper statement, and I ask your Honor at this time for a withdrawal of a juror and for a mistrial.

The Court: Denied. He is inquiring of this man who now takes the stand on behalf of the defendant, but I do not think you can go into that, as it wasn't in the presence of the defendant, but there will be no withdrawal of a juror at all.

Mr. Wegman: I ask your Honor at this time to instruct the jury if the witness made any such statement it has no relation whatsoever to the defendant, Harry Berger, and is not to be charged against the defendant, Harry Berger, is not to be considered as evidence in any way whatsoever in this case. I ask to have it stricken from the record.

The Court: I will instruct the jury it does not bind the defendant Berger.

[fol. 545] Mr. Singer: I withdraw the question.

The Court: It does not bind him at all; it is the same as if it was never uttered.

Q. Did Berger tell you that he wanted you to bail these girls out because, if they stayed in jail, they would testify against him?

A. Which Berger do you mean?

Q. This Berger, this defendant Berger.

A. No; I was in no position to talk to Harry Berger. I talked to his brother.

Q. Did some other Berger tell that to you?

Mr. Wegman: I object to the question.

The Court: Yes, because if somebody else told him, that would not bind this defendant.

Q. As a matter of fact, Mr. Wassenberger, the bond for these two girls was arranged through the defendant Berger?

A. No.

Q. Was it *was* arranged through the same persons that arranged Berger's bond?

Mr. Wegman: I object to the question.

The Court: Objection overruled, whether it was the same person, he can ask him that.

Mr. Wegman: It has nothing to do with this defendant who bailed them out. He said this defendant, Harry Berger, had nothing to do with it.

The Court: He asked him if Harry Berger's bail was ar-
[fol. 546] ranged through the same person that arranged the bail for the girls; that he can ask him, and he is limited to that.

Mr. Wegman: I respectfuly except.

Q. Isn't that so?

A. It was arranged by a man by the name of Mr. Harris and Mr. Irving Berger, brother and uncle of Harry Berger.

Q. The bail for the girls as well as for Harry Berger?

A. Exactly.

The Court: What they said doesn't bind the defendant.

Mr. Singer: I am not asking you what they said. That is the end of that inquiry.

Q. You said when Berger was in the pen with the girls he refused to go out on bail unless the girls went out also?

A. Right.

Q. Did he say to you that the reason he refused to go out was because if he went out and they stayed in, they would testify against him?

A. No, he didn't say that at all; he said I am being paid for the three bonds, and I should take the three out.

Q. Now, what business did you have to talk to Katz, who was a Government witness, or was a defendant who hadn't retained you to have anything to do with his bond?

A. I never talked to him.

Q. By what right or authority did you attempt, when you
[fol. 547] got permission to go into the pen, if you got it, to talk to a person who was not connected with your bond business?

Mr. Wegman: I objected to that.

A. I did not talk to anybody else.

The Court: Objection overruled; on the question of credibility he has a right to ask him what he meant, on the question of his credibility.

Mr. Singer: That is all.

Redirect examination.

By Mr. Wegman:

Q. Mr. Wassenberger, there isn't any doubt whatsoever, is there, that when Jack Katz made that statement, "Take them out, they are innocent," he was referring to the defendant Harry Berger?

A. Absolutely.

Mr. Wegman: That is all.

Mr. Singer: That is all.

Mr. Wegman: I rest.

Mr. Singer: The Government, in rebuttal, will call Agent

The Court: Has everybody rested?

Mr. Kamber: I have this man coming over in a taxicab.

The Court: Just that one man?

Mr. Kamber: Yes, one man, another witness.

[fol. 548] Mr. Singer: If he gets here before I am through I will permit him to go on.

Mr. Kamber: I did not waste any time getting him.

James F. Johnson, called as a witness on behalf of the Government, having been duly sworn, testified as follows, in rebuttal:

Direct examination.

By Mr. Singer:

Q. Mr. Johnson, you are a Secret Service operator?

A. Yes.

Q. You were present when Jones made a statement over at the office, Secret Service office?

A. Yes.

Q. That was that written statement offered in evidence in this case?

A. Yes.

Q. Now, Mr. Johnson, did Mr. Jones, when it came time to sign the statement, say to you that he wanted to correct it because the figures were wrong?

A. He did not.

Q. Did Jones make any complaint at all about what was in the statement?

A. He did not.

Q. Was he sober or was he drunk when he made the statement?

A. He was sober.

Q. Could you smell liquor upon his breath at all that morning?

A. I could not.

Q. When did you see him?

A. That morning?

Q. About what time that morning?

A. 10:30 in the morning.

[fol. 549] Q. Did he complain to you that anybody had struck him?

A. He did not.

Q. Are you certain now there wasn't any talk about the figures in that statement being wrong?

A. I am sure.

Mr. Singer: Your witness.

Mr. Crooks: I haven't any questions.

(Witness excused.)

JOHN A. KETT, recalled in rebuttal, testified as follows:

Direct examination.

By Mr. Singer:

Q. Mr. Kett, did you hear the defendant Jones yesterday that on Saturday night at this police station out in Queens you smacked him across the face?

A. I did.

Q. Did you do that?

A. I did not.

Q. Did you hit him at any time?

A. I did not.

Q. Was there any occasion to hit him? Didn't he talk freely?

A. He did.

Q. And if he didn't talk freely you wouldn't have struck him either, would you?

A. I would not.

Q. Your position does not require you to get a confession from a man, does it?

A. It does not.

Q. As a matter of fact, your position requires you to in-
[fol. 550] vestigate alleged criminals?

A. That is true.

Q. You are not concerned with the prosecution at all of those criminals except to refer them to the District Attorney?

A. That is all.

Q. On Monday morning you were present when Jones made that statement, is that correct?

A. I took the statement from him; I asked the questions.

Q. Did Jones ever say that morning that there was a mistake in the statement, in the figures?

A. He did not.

Q. One other point; did you hear the defendant Berger testify in this case?

A. I did.

Q. Did you hear Berger testify that at the office of the Secret Service, Katz, a witness and also a defendant, said to him, "Berger, were you fooling with my wife?" And Berger said "No, I wasn't." And Katz said, "The reason I brought you into this case is because I thought you were fooling with my wife, but when I get to the court and Grand Jury, I won't testify against you." Was there anything like that said?

A. No, sir.

Q. Were you present at all times over in that Secret Service office when these men were being questioned?

A. I was.

Q. Were you in my office when they were being questioned?

A. I was not.

Q. Did you hear over at the Secret Service office Berger say that he had brought Jones up to the apartment where
[fol. 551] the girls were and had introduced him to Katz?

A. I did.

Q. There is no question about that?

A. Absolutely none.

Q. I mean, the defendant Berger; you have got no animus against him?

A. I certainly have not.
Q. It is just another case?
A. Positively.
Q. As a matter of fact, in your case the original investigation was the Jones case?
A. It was.
Q. And it later developed through this other investigation, into a case against all of them?
A. That is true.
Q. You are certain now that Berger said to you or to others in your presence that he had brought Jones up to the girls' apartment and introduced him to Katz?
A. Positively.

Mr. Singer: Your witness.

Cross-examination.

By Mr. Crooks:

Q. Mr. Kett, this statement that has been offered in evidence, that you took from the defendant Jones, did you put the questions to Jones?
A. Every one of them.
Q. I mean, you did that yourself?
A. I did.
Q. Then after that statement was taken did you leave the room?
A. I left the room at different times while it was being taken, and it was not resumed until I came back.
Q. Then after the statement, after the questions were asked and the answers made, they were taken by a stenog-
[fol. 552] rapher, were they not?
A. They were.
Q. And then the questions and answers were transcribed?
A. That is true.
Q. After that statement was taken was it handed over to you, or some other agent?
A. When it was finished it was handed to Agent Johnson.
Q. And do you know what Agent Johnson did with it?
A. He gave it to me then.
Q. Agent Johnson gave it to you?
A. Yes.
Q. What did you do with it?

A. I had the defendant read it, the defendant Jones read it.

Q. I mean, you handed it to the defendant, did you?

A. I did.

Q. Did he look over the statement?

A. He read it over.

Q. Were you present?

A. I was.

Q. At the time he read it?

A. I was.

Q. Was anybody else present?

A. Johnson was present also.

Q. Anybody else present?

A. When it was signed, the stenographer was present to witness the signature.

Q. And Jones signed the statement in your presence?

A. He did.

Q. So the statement was signed right after Jones read the statement through, he signed it immediately?

A. He did.

Q. Did he make any suggestions that there was anything wrong in the statement?

A. He did not.

[fol. 553] Q. He did not ask that there be any corrections at all?

A. He did not.

Q. You say you did not hit Jones in the face?

A. I did not.

Q. You never at any time made the statement that you ever hit him?

A. Beg pardon?

Q. Did you ever at any time or any place make a statement that you did hit him?

A. I did not.

Q. Was anything ever said by Jones that he had been struck by somebody?

A. In Court here he stated it.

Q. I mean outside of court, when Mr. Singer asked him about that.

A. No.

Mr. Singer: I object to that, if your Honor please; I object to the statement on the ground that this witness may

not know about what Jones testified to when he testified before the Grand Jury.

Mr. Crooks: It was under Mr. Singer's cross-examination, and not part of the direct examination that that was brought out.

The Court: I understand that is correct.

Mr. Crooks: I do not want to mislead him.

The Court: You weren't before the Grand Jury at the same time Jones was?

The Witness: No, sir.

[fol. 554] The Court: You weren't in the room when he was there?

The Witness: No.

The Court: So what he testified before the Grand Jury you do not know.

The Witness: No, I do not know.

Q. You did not tell the Grand Jury that you struck him?

A. I did not.

Q. Did Jones say anything to you subsequently about having been struck?

A. No.

Q. He never mentioned it to you?

A. No; I haven't seen him since.

Q. You never had any idea that he was going to testify that you had struck him?

A. No, I did not.

Q. It was an absolute surprise to you when you heard Jones say that on the stand?

A. No, I understand that he had made the accusation before the Grand Jury.

Q. Long after he was arrested?

A. And I anticipated he would make the same accusation here.

Q. That was a long time after the arrest?

A. Yes.

Q. And after this statement was taken?

A. That is true.

Q. Jones did not give you any trouble over there when the statement was being taken, did he?

A. Absolutely not.

[fol. 555] Q. You asked him the questions and he answered them?

A. That is true.

Q. And you tried, in putting your questions, to be fair and honest with Jones in doing it?

A. I certainly am. I think you will agree with me too on that.

Mr. Crooks: That is all.

Cross-examination.

By Mr. Wegman:

Q. Mr. Kett, you investigated this case, did you not?

A. The Jones case?

Q. And the ramifications of the Jones case?

A. Only to the extent that when Berger was brought into the office——

Q. What?

A. When your client was brought into the office.

Q. Let us get this straight. Was Berger brought into the office?

A. Well, he came in himself.

Q. Let us be accurate?

A. That is a fact.

Q. Have all the rest of your statements been as accurate as that?

Mr. Singer: Of course——

The Witness: That is shading the words.

Mr. Singer: I do not want him to characterize these statements. The fact of the matter is, he was brought in, technically he was brought in by a telephone call.

[fol. 556] Q. As a matter of fact, Berger came in voluntarily, didn't he?

A. As far as I know, yes, sir.

Q. You were there at the time?

A. When he came into the office, yes, sir.

Q. You were there when he was arrested, and you were there all the way through, until he was taken to the station house for the night?

A. I was there from the time he reported to the office until he was lodged for the night in the Old Slip Police Station.

The Court: Will you speak a little louder? I doubt if they can all hear you.

Q. You are taught in the Secret Service to work very carefully, I mean that is fundamental, is it not?

A. It is.

Q. And when any defendant makes any statement or admission, it is your duty to reduce it to writing immediately, isn't it?

A. Yes.

Q. If possible?

A. Yes, sir.

Q. Have him sign it?

A. Certainly.

Q. Did you reduce to writing this so-called statement of Berger's at your office that he had introduced Jones to Katz?

A. No, I did not.

Q. Did anybody?

A. Not that I know of.

Q. Now, Mr. Kett, did you do any investigating on this case at all between the time that you arrested Jones, which I think was about the 5th of January, or sometime along about that date, until February 6th, a little over a month later, when Mr. Berger came into the Secret Service office in the Custom House?

A. Yes.

[fol. 557] The Court: One minute. Mr. Kamber has absented himself without saying anything to the Court. Just stop a moment. We are not bound to stop, because he went out without notifying the Court, but we will wait until he returns.

Mr. Singer: He went out to make a telephone call.

(Mr. Kamber returns to the room.)

The Court: Proceed.

Q. During all of that time you were working on this case, I do not mean you were giving all of your time to this case, but during all of that period you were working on it, weren't you building it up?

A. I had nothing whatsoever to do with the case.

Q. I see. Up until the time that there was this little gathering in the Custom House on or about February 6th——

A. I had nothing to do with the case whatsoever.

Q. I say that between the time that Jones was arrested until that day, you had been working on the Jones case, hadn't you, building it up, interviewing witnesses?

A. Not a thing, outside of after Jones was brought over here and arraigned by Agent Johnson, after Jones and Johnson left the office, I went out to pick up one of those notes from the bank that had been passed on Berger in Woodside.

Q. And that was the complete extent of your investigation?

A. That completed my investigation in regard to this case.

[fol. 558] Q. In the course of whatever investigation you made did you hear anybody mention the name of Harry Berger?

A. During my investigation?

Q. Yes.

A. No; another party was described, but no name given.

Q. That description wasn't a description of Harry Berger, was it?

A. It tallied with his description.

Q. Let us be accurate about that, Mr. Kett. Where is that statement?

A. To save a little time, this is the description that was given to me. In other words, when I interrogated Jones at his own home on January 5, 1934, he described——

Q. Let us have it?

A. I asked Jones what this alleged bookmaker looked like, and he told me he was named Harry, Italian or Greek, American-born, 37 or 38, 5 foot 6, muscularly built, 160 pounds, broad shouldered, dark complexion, black hair, clean-shaven, fairly nice looking, good features, and heavy eyebrows.

Q. You wouldn't say that Mr. Berger was Greek or Italian, would you?

A. No, I would not, but he could be taken for that.

Q. That is the very first statement in the description——

Mr. Singer: You didn't hear the last part. He said he could be taken for one. You didn't hear that.

[fol. 559] Mr. Wegman: Now you have repeated it for the benefit of the jury.

The Court: Well, he said it.

Mr. Singer: You didn't hear that.

Mr. Wegman: My hearing is fairly good. Your Honor, I can hear the witness.

The Court: Go right along; he said it.

Q. If Jones had wanted to name Harry Berger, there is no doubt in your mind he knew who Harry Berger was at the time he gave you that description?

A. There is no doubt in my mind now.

Q. You knew definitely when you were talking to Jones that Jones knew Berger, had known him for some years?

A. I know it now.

Q. I mean you know that now?

A. Yes.

Q. I am asking you about your present knowledge.

A. Yes.

Q. Jones at that time told you he did not know the name of this bookmaker with whom he had made bets?

A. That is true.

Q. Have you heard anything whatsoever since you have been on this case that would indicate to your own mind that Harry Berger had ever been a bookmaker, had ever made bets, or laid bets?

A. No.

Q. It is a fact, is it not, Mr. Kett, that if Jones was desirous of exposing Harry Berger, if Harry Berger were the man, he could have given you his name?

A. That is true.

[fol. 560] Q. And it is a fact that he didn't give you any such name, isn't it?

A. That is true.

Q. And if we follow your train of thought, your prosecutor's mind, or your investigating mind, isn't it natural to assume, if you take it for granted that Harry Berger is the man that was meant by that description, that Jones was trying to conceal the identity of Harry Berger, isn't that so?

A. Yes.

Q. And if he were trying to conceal the identity of Harry Berger, and if Harry Berger was that man, he certainly wouldn't have given you a description that came anywhere near fitting him, isn't that so?

A. I can't tell you that——

Mr. Singer: I object to that.

The Court: He has answered; it is purely argumentative, of course, but he has answered it.

Mr. Singer: What is the answer?

The Witness: My answer is the same as I gave before; I cannot tell you what he would do.

Q. If you are trying to conceal something——

Mr. Singer: I object to that; that is argumentative.

The Court: That is purely argumentative. What is the use of wasting time on that; what he would do isn't an issue here at all.

[fol. 561] Q. Did you do any work at all on this case after the time that Harry Berger came into the Secret Service office?

A. I was with the other agents the night that they arrested Rice and Lee and the other men that were in that office, and I was also present when they were interrogated that evening and the following morning in the District Attorney's office in this building.

Q. Have you assisted in the investigation generally since that time?

A. No, I have not.

Q. Throughout this case, you know who is named in this indictment, don't you?

A. Yes, I do.

Q. Has there been anybody at all who has in any way whatsoever made any statement to you or presented any evidence to you or given you any intimation, outside of what is named in the indictment, that would indicate in any way whatsoever that Harry Berger was implicated in this case?

A. That question is too involved for me to answer.

Q. Well, I will withdraw it and try to make it simpler. Excluding the persons named in this indictment as defendants, has there been anybody whatsoever who at any time whatsoever made any statement to you or offered any evidence to you or made any intimidation whatsoever——

A. You are getting too deep again; I cannot follow you on that. I will be frank to confess that your question is too involved for me. Will you make your question simpler?

[fol. 562] Mr. Singer: Of course, if your Honor please, if he is asking what anybody outside of the indictment said,

I am going to ask what everybody in the indictment said. I have that right. I do not want to become involved in any long argument, but I do want to warn him about the effect of his asking such questions.

The Court: I am not ruling on that. You are taking your chances. If you start to ask this man about hearsay, and whether anybody said anything to him or not, you are opening the door for inquiry from the other side.

Mr. Wegman: Is that your Honor's ruling?

The Court: I have just told you the danger that you are in. I will rule when the question is presented. I am warning you now that you take the chance if you open the door.

Mr. Wegman: I respectfully except.

Mr. Singer: I would like to know what he is excepting from.

Mr. Wegman: To this warning.

Mr. Singer: All right; then you are excepting to the warning.

Mr. Wegman: And to the suggestion that was implied in your statement.

The Court: What is that?

Mr. Wegman: And to the suggestion that was implied in Mr. Singer's statement.

[fol. 563] The Court: I haven't anything to do with Mr. Singer. You have excepted to my warning you.

Mr. Wegman: That is right.

The Court: And that is all. Proceed.

Q. Mr. Kett, I will try to make that question a little bit simpler. Have you interviewed any witnesses in this case?

A. By "this case" you mean the whole case, or just as far as Jones is concerned?

Q. Well, Jones is one of the defendants in this case.

A. I have interviewed all the witnesses in the Jones case, and no others.

Q. No others?

A. No; I was present when they were being interrogated at different times, but I took no part in the interrogation, just as a listener.

Q. Well, now, were all of those persons who were interrogated brought to court to testify?

A. No.

Q. They weren't?

A. They were not.

Q. Can you tell us, please, who were interrogated as witnesses that were not brought to court?

A. Well, I have in mind this Miss Wishnu, who has been referred to here in this case, if you want to call her a witness or defendant, I do not know which.

Q. She was never arraigned before a United States Commissioner, was she?

A. No, she was not.

[fol. 564] Q. Anybody else?

A. That is all that I can recall offhand.

Q. Everyone else testified here in court, as far as you can recall?

A. Yes.

Q. Do you know what happened to Miss Wishnu?

A. Yes; she was released.

Q. I am not talking about that. Do you know where she is?

A. No; I have no idea whatsoever.

Q. Have you made any efforts to find her?

A. I have not.

Q. Do you know whether anybody in the Secret Service has made any effort to locate Miss Wishnu to bring her to court to testify?

A. I do not know.

Q. Do you know whether the District Attorney made any request of your office to locate Miss Wishnu to bring her here to give her testimony?

A. I do not know whether he did or not.

Q. At the time that you brought Miss Wishnu over to the United States Attorney's office, when you had picked her up, she was under arrest, was she not?

A. I had not picked her up.

Q. I mean somebody from your office had?

A. Yes.

Q. And at that time you knew where to find her?

A. I did not.

Q. I mean your office did, obviously, they had arrested her?

A. Yes.

Mr. Wegman: That is all.

[fol. 565] Redirect examination.

By Mr. Singer:

Q. Well, you forgot to say, Mr. Kett, I think, that three persons who were defendants who were interviewed didn't testify; those are four persons.

Mr. Wegman: Now, if your Honor please, I asked him witnesses who were interviewed aside from the people named in the indictment. Obviously, a defendant cannot be made to testify.

Q. So that the record is straight, if there is going to be any discussion about it, you were present when Mrs. Katz was questioned over at the Secret Service office?

A. I was.

Q. You were present when Lee, I do not know whether you were or not, were you present when Lee was questioned?

A. Over there, yes, but not here.

Q. I am talking about the Secret Service office?

A. Yes.

Q. Were you present when Miss Seigal and Miss Molnar were questioned over in Manhattan?

A. I was.

Q. They didn't testify here in court?

A. No.

Mr. Singer: That is all.

Mr. Wegman: Now, if your Honor please, at this time, when the matter is fresh, I respectfully request that your [fol. 566] Honor in your charge direct the jury that they are to draw no conclusion whatsoever, nor are they to draw any inferences from the last question of the District Attorney to the effect that those persons whom he named made any statement involving the defendant.

The Court: I won't say anything of the kind. He asked him whether he was present when they were interrogated, that is all he asked him, and he answered. There wasn't anything said about what they testified to at all, not a word. You had asked him a question and gotten an answer to which there might have been some doubt, there was a question whether your question related only to witnesses or to everybody. It was simply a matter of straightening it out. He was present when they made statements. Nothing was testified as to what was given in those statements.

Mr. Wegman: I am very anxious to have the record straight on the matter——

The Court: The record is perfectly straight.

Mr. Wegman: I would therefore respectfully request that the jury be instructed that they are to draw no inference from your Honor's warning to me, and that they are to [fol. 567] draw no inferences from the last question of the United States Attorney, for the reason that we are precluded from offering any evidence rebutting a more suggestion or warning.

The Court: There wasn't any suggestion whatever. You were told if you persisted in a certain way, that certain things might follow, so there is no inference to be drawn from that at all. That was simply what would happen if something happened, with reference to what testimony might be received. There was no proof of what these people said at all. You cannot draw any inference where there is no proof. Mr. Singer had a right, of course, to bring to the witness' attention a correction of what might have been a mistaken statement in his answer to another question.

(Witness excused.)

Robert L. Godby, recalled in rebuttal, testified as follows:

Direct examination.

By Mr. Singer:

Q. Mr. Godby, you were in the office of the Secret Service when Berger came in or was brought in as a result of a telephone call?

A. He came in, yes.

[fol. 568] Q. Was Katz there at any time while he was there?

A. He was.

Q. Did Katz ever say to Berger that he wanted to know whether Berger had been fooling with his wife; did he?

A. He did not.

Q. Did Katz ever accuse Berger of fooling with his wife?

A. I did not hear him.

Q. Did Katz ever say to Berger, "Berger, if I thought you were fooling with my wife I would testify against you, but now I am convinced you haven't. I am sorry I had you arrested; I am sorry I said anything against you. When I get to court I am not going to testify against you"? Did anything like that happen?

A. Nothing like that happened in my presence.

Q. Were you present in my room when Berger was being examiner, was being questioned by me?

A. I was.

Q. Did Berger say that he had brought Jones up to the Girls' apartment and introduced him to Katz?

A. He did.

Q. Is there any doubt about that in your mind?

A. There is absolutely none whatsoever. He told me that in the office also.

Q. Mr. Godby, the fact of the matter is that your father is connected with the State Department that issues real estate licenses, is that correct?

A. He is.

Q. And when you questioned Mr. Berger he told you he was a real estate broker?

A. He did.

[fol. 569] Q. Then did you say to him, "How could you be a real estate broker when you have got a conviction for a felony"?

A. I did.

Q. Then did he say,—tell me what he said.

A. He said he had a license, he of course had to have a license, so I told him, "You must have committed perjury to get a license." And he said, "I did not put it on my application that I had been convicted." And I said I would have to inform my father, as it was his position to keep the real estate broker's clean.

Mr. Singer: That is all.

Cross-examination.

By Mr. Wegman:

Q. Had you already notified your father at that time?

A. No, I notified him that night.

Q. What was that date?

A. That was on the 5th, I believe.

Q. You had been going around—when you were working on this case you had seen Jack Katz ever since about the 18th of January, is that right?

A. That is right.

Q. How often did you see Jack Katz during that time?

A. Well, I saw him about every day, and then I went away for about a week. I seen him practically every day, with the exception of a week when I was out of town.

Q. You first met Katz in the office of the Daily News, I think he testified, is that correct?

A. That is correct.

Q. And he was introduced to you by someone connected [fol. 570] with that paper?

A. He was, a friend of mine.

Q. That friend of yours was connected with that paper?

A. Yes.

Q. And he introduced Katz to you?

A. He did.

Q. And he told you that Katz wanted to inform you about some offense of which he was guilty, and implicate some other people; is that right?

A. No; he wanted to inform me about a counterfeiting case.

Q. And did Katz tell you immediately that he was guilty of this counterfeiting?

A. Yes, he admitted he had passed some of the notes himself.

Q. Did you take him into custody?

A. I did not.

Q. Did you have any arrangement or any understanding with him about what would happen to him in the event that this case was prosecuted?

A. Why, later on I told him I was going to lock him up, which I did.

Q. Did you give Katz any reason whatsoever to believe at the time that you first met him and when you were working with him thereafter, that if he put you on the trail or made statements to you regarding other people or implicated or involved other people, that that would result in his going free?

A. I did not.

Q. When for the first time did you intimate or suggest to him that he would receive consideration from the Government for his assistance?

[fol. 571] Mr. Singer: I do not object to the question as much as I object to the fact that it has been asked and answered, and he is now called in rebuttal and the cross-examination has nothing to do with the direct examination in rebuttal. That is purely a rehash of matters that are already before the jury.

The Court: That is right. I thought the questions were asked when he was called before and answered.

Mr. Wegman: I do not believe so.

The Court: It is not relevant to anything that he has testified to on rebuttal.

Mr. Wegman: I respectfully submit that the question is proper.

Mr. Singer: I do not object to him answering.

The Court: He does not object, but we are just going over what was said before. You should ask him did he ever do certain things or say certain things.

Mr. Wegman: There is no objection to that. I will withdraw the question.

The Court: Yes.

Q. Did you ever suggest or intimate in any way to Katz that he would receive some consideration by reason of his assistance to the Government in making this case?

A. I never told him he would, but it is a most natural [fol. 572] thing in the world that any man giving information would receive some consideration.

Q. Did you ask Katz when you first met him what his motive was in telling you this story and giving you this free confession at the time when apparently he wasn't under any suspicion?

A. Why, no, I didn't ask him what his motive was, but the idea was he was going to try to deliver the plates to me.

Q. Would he have received a reward for that?

A. No; there is no reward for plates.

Q. Was Katz under suspicion at that time?

A. Katz?

Q. Yes.

A. Well, I was up-State, I do not know; I couldn't answer that, sir.

Q. Well, are you familiar with the records of your office on this case?

A. My office is up-State.

Q. Do you know whether or not Katz was under suspicion at that time, if not by you, by anybody in the Secret Service?

A. At that time I did not know, but I learned afterwards that his wife had reported him to Agent Rodney.

Q. When was that that she reported him?

A. To the best of my recollection, Rodney told me it was about ten days or a week previous.

Q. Ten days or a week before you saw Katz, which was on the 18th?

A. That is right.

Q. Do you know whether Agent Rodney had seen Katz in the interim?

[fol. 573] The Court: Agent who?

Q. Rodney; do you know whether Agent Rodney had seen Katz in the interim?

A. He had not; he could not find him, to the best of my knowledge, or locate him.

Q. So there was nothing at all at the time you saw Katz, the first time you saw Katz, to indicate that Katz had any knowledge whatsoever that he was under suspicion?

Mr. Singer: Of course, if your Honor please, I object to that. No man can say what someone else might know.

The Court: He can testify to facts, but he cannot testify to Mr. Katz' mental processes. He can testify to any facts, and from those we can draw inferences, but he cannot testify to what Mr. Katz thought.

Q. You did not know that Katz was under suspicion?

A. I did not know.

Q. Katz did not tell you that he was under suspicion?

A. He did not.

Q. Did it occur to you that there was something rather peculiar in this individual going to a newspaper and having a newspaper get in touch with you and bringing you down from Syracuse, or some place up-State, to listen to confession that he had been passing counterfeit money?

A. No; there is nothing unusual about that to me; that [fol. 574] has often happened.

Q. Where a man has never been under suspicion and voluntarily calls you down from up-State to make a confession to you?

A. It has happened.

Q. You never asked Katz anything at all about his motive?

A. No, I did not.

Q. And Katz never told you what his motive may be?

A. No, he did not.

Q. There was nothing that ever occurred at any time during you contact with Katz or your conversations with Katz which indicated what his motive may have been?

A. His motive may have been he figured his wife had squealed on him.

Mr. Singer: Do you want to try this case on guess or speculation? I think we can all do a little guesswork, but if he did not tell him, I do not see how he can be asked.

The Court: You did not object.

Mr. Singer: I do not want to object.

The Court: He has answered it now.

Mr. Singer: He did. He gave a guess.

The Court: Surely.

Mr. Singer: I am entitled to my guess.

The Court: He has answered the question. You heard the answer.

[fol. 575] Q. Do you know whether or not Katz had been informed prior to the time when you first met him that his wife had made a complaint against him?

A. I do not.

Q. Did you take a written statement from Katz?

A. I did.

Q. Did you take a written statement from other people?

A. Just what do you mean, written? What they signed?

Q. Yes.

A. Yes, I did.

Q. Did you ever ask Harry Berger to sign any statement?

A. I did not.

Mr. Wegman: That is all.

Mr. Singer: That is all.

Mr. Wegman: If your Honor please, there is just one question I seem to have overlooked.

The Court: Proceed.

Q. Did Katz tell you where he had first met Berger?

A. Katz?

Q. Yes; did he tell you where he first met Berger?

A. Yes; he told me he first met him, I do not know whether it was in the parole office or at 57th Street, at some such place; I can't just recall.

Q. Do you remember about the date? Do you remember what he told you was the approximate date when he first met Berger?

A. I do not recall that, sir.

Q. Would it refresh your recollection if I suggested De-
[fol. 576] cember 15th, the party on December 15th?

A. No, I couldn't say.

Q. Do you remember enough about your conversation on that subject to recall definitely that it was a recent meeting?

A. I really couldn't say how recent; I do not just recall when they met.

Q. Did you investigate Katz' criminal record?

A. I did.

Q. Can you tell us when for the first time Katz went to Sing Sing?

Mr. Singer: It is all in the record. I do not know how he can tell when he went to Sing Sing. He might have been convicted, and he wouldn't know whether he went there or not.

Mr. Wegman: I withdraw the question.

Q. Is your recollection definite on one thing, Mr. Godby in connection with this date or place when Katz and Berger met, is your recollection sufficiently definite to place the meeting in New York City?

A. Why I believe it was; I am not sure now, which meeting do you mean, the first time?

Q. The first time that Katz ever met Berger.

A. I do not recall that, sir.

Q. Have you any notes that would refresh your recollection?

A. I have not.

[fol. 577] Q. Is there anything about that in the statement that Katz made to you that might refresh your recol-

lection? If there is, I wish you would refer to it and refresh your recollection.

A. I really don't know. May I look at the statement.

The Court: Yes, if it is here.

(Witness examines paper.)

Mr. Singer: Are you ready?

The Witness: Yes. There is nothing in the statement which says anything about the first meeting. It says about the other meetings.

Q. When is the first meeting mentioned in the statement? What is the date of it? I do not want you to testify from the statement, I just want you to testify from your recollection, having looked at the statement.

A. It does not give the date, but it gives the address here, the meeting took place——

Q. Is that address in New York City?

A. Yes, sir.

Q. And you do not recall ever having asked Katz—I will withdraw that. Did you ever ask Katz where he first met Berger?

A. Why, I do not recall.

Q. Then you do not recall whether you ever asked him, and you certainly do not recall what the answer was if you did ask him, is that right?

A. No; the only thing I know about that is it was my understanding that they either met—I would not want to say, [fol. 578] but since they were both ex-convicts I got the idea that possibly they might have met at Sing Sing.

Q. That is exactly what I have been trying to get at, Mr. Godby. You knew from your study of this case and your examination of the records that Harry Berger was released from Sing Sing in 1925, at which time Katz was in California, and that Katz never went to Sing Sing until 1929.

A. But I understand they both reported to the same parole officer in New York City.

Q. Where do you get that information from? What do you base it on?

A. Either on Katz' statement or on the parole officer's statement.

Q. Did you interview the parole officer?

A. There was a parole officer in the Katz case, yes; he was in Mr. Singer's office.

Q. When?

A. Right after the arrest.

Q. Is he here in court?

A. No, sir.

Q. Have you asked him to come here?

A. I didn't think it was necessary to call him.

Q. Did that parole officer tell you that Katz and Berger had met in his office?

A. To the best of my recollection, it was something to do with the parole or serving time; I wouldn't want to say definitely.

Q. You wouldn't want to be unfair, would you?

A. I only want to tell the truth. I do not want to be unfair and say that the man met him in prison, or where he [fol. 579] met him, because, to the best of my recollection, I cannot recall.

Q. You know, as a matter of fact, that Katz testified when he was on the witness stand here in court, that the first time he ever met Berger was when Katz and his wife attended a house-warming in the apartment of Miss Seigal on 57th Street, on December 15th, and they were introduced to Berger there?

A. No, I recall him testifying about meeting Berger in that apartment.

Q. That is right, and he said they were introduced there?

A. Yes? I do not know, I won't say they were introduced. I do not recall that. But I do recall that Berger accused Katz of telling Audrey Seigal that they had both served time in prison.

Q. That is right.

A. I recall that.

Q. When did that incident take place?

A. I do not know; it was in that apartment on 57th Street.

Q. As a matter of fact, now that your memory has been refreshed, you recall that the first time that that question came up was when Berger, sometime in January, went to the parole office to find out how it had leaked out from the parole office that he was on parole; you know, as a matter of fact, from your investigation, that he had been finally discharged from parole four years ago?

A. I did not go into that. All I got was his past record, his police record.

[fol. 580] Q. Doesn't his police record show that he was discharged from parole in 1930?

A. The police record does not show a discharge from parole at all; it just gives the offense, and the sentence.

Q. Did you ask the parole officer about that?

A. I do not recall that. My honest opinion was I thought the man was still on parole, that is my honest opinion; I am not sure.

Q. Have you investigated that recently?

A. No, I did not; it wasn't necessary to investigate it.

Mr. Singer: What has that to do with it? I object to it. I have let him waste a lot of time, and I do not want to stop him if he may have a point, but I object to this now; it is about time he stopped.

The Court: We are not getting anywhere.

Mr. Singer: It is immaterial here. It has nothing to do with this case.

The Court: Go ahead. I do not know what we are getting, but go ahead.

Q. You do not know, then, whether it was from conversations with other people or from conversations with Katz——

Mr. Singer: That has been asked and answered about five times, and I object to it.

[fol. 581] The Court: Let him answer.

Mr. Wegman: Mr. Singer is a mindreader; he knows what I am going to ask before I ask the question.

The Court: Pardon me. Are you arguing with me? I have told you to go ahead.

Mr. Wegman: I am not arguing with you.

Mr. Singer: Are you arguing with me?

The Court: Let us go ahead.

Mr. Wegman: May I have the last question read?

(Last question read by the reporter.)

Q. (Continuing.) That you ever learned the date of any meetings between Katz and Berger?

A. Wait a minute. Any meetings, or the first meeting?

Q. You said in your statement there you have no record of the date?

A. No record of any definite date, no.

Q. That is right.

A. No definite date.

Q. So you do not know where your information came from as to any date?

A. I got a lot of information.

Q. I mean, you do not recall who was your informer?

A. On what particular phase?

Q. On the date of the meeting of Katz and Berger.

A. The first meeting?

Q. Yes?

A. No, not on the first meeting.

Q. Then if you testified that Katz told you that he had met Berger in Sing Sing, you didn't mean to so testify, and [fol. 582] you have no knowledge of that?

A. It seems to me that Katz did say, I believe Katz told me he met him at Sing Sing.

Q. Do you believe that?

A. No, I have no proof of it.

Q. Do you believe it?

Mr. Singer: I object to it. How can he tell?

The Court: He asked him if he believed it.

Mr. Wegman: If your Honor please, the witness testified that he believed that Katz told him——

The Court: That is right.

Mr. Wegman: That he met Berger at Sing Sing.

The Court: He believes he told him that.

Mr. Wegman: And I am asking whether he now believes that Katz told him that.

Mr. Singer: He just said so.

The Court: You haven't been listening. He said that is what he did say.

Mr. Wegman: But I am asking him——

The Court: Pardon me, let us get it straight.

Mr. Singer: Yes, I would like to get through this.

The Witness: To the best of my recollection, I believe that Katz told me that.

Mr. Wegman: All right.

[fol. 583] Redirect examination.

By Mr. Singer:

Q. I will tell you what is bothering you, Mr. Godby. You may have testified the other day that Katz told you that he

met Berger in jail. Now, the fact of the matter is that Katz went to Sing Sing in 1929, and Berger came out of Sing Sing in 1926, so what counsel is trying to find out from you is how it was possible for Katz to meet Berger when Berger wasn't there.

Mr. Wegman: Now that Mr. Singer is testifying without benefit of oath, at least try to keep the date straight, the date of Mr. Berger's departure from Sing Sing.

Mr. Singer: I will get it straight for him.

The Court: He is asking him whether certain things are so.

Q. You have testified that you think that Berger, Katz told you he met Berger in jail in Sing Sing; that is what you have said, is that right?

A. Didn't I say either in Sing Sing or in the parole office?

Q. You believe that he told you he met him in Sing Sing; that is what you have said before?

A. That is right.

Q. That is what is worrying him, how that was possible for him to meet him in jail when he wasn't in jail. You do not say you know he met him in jail?

A. I cannot.

[fol. 584] Q. All you can say is to the best of your recollection you believe Katz said he met him in Sing Sing, but you also believe it may have been over at the parole office?

A. That is right.

Q. Your memory on that thing isn't clear and concise?

A. It is not.

Q. And you wouldn't want to have your testimony bound by that exact statement?

A. I would not.

Mr. Singer: That settles that. That is all. That is the Government's case. The Government rests.

The Court: Is your man here, Mr. Kamber?

Mr. Kamber: May I ask your Honor, I understand this man will be here at two o'clock. I do not know just what the hour is; it is pretty close to one o'clock.

The Court: Yes, I appreciate that. You have been watching the clock.

Mr. Kamber: Now I won't take up more than five minutes. He will be here at two o'clock, and if he doesn't come at two o'clock, that is the end of it.

The Court: Is that your case?

Mr. Wegman: I am through, sir.

The Court: I will extend to you the opportunity to produce that one man at two o'clock. You have no other witnesses, Mr. Crooks?

[fol. 585] Mr. Crooks: No.

The Court: Then, Mr. Kamber, I will give you that opportunity.

(Addressing the jury) Do not allow anybody to talk to you about the case, do not discuss it between yourselves, do not form any opinion until it is finally submitted to you, and come back at two o'clock.

Recess until 2 P. M.

Met pursuant to adjournment at 2 P. M.; present as before.

JOHN E. SIMMONS, called as a witness on behalf of the defendant Rice, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kamber:

Q. Mr. Simmons, take the stand over there and talk out loud so that this gentleman here can hear all that you say. Your name is John Simmons?

A. Yes, sir.

Q. What is your business?

A. I am a restaurant manager.

Q. Restaurant manager where?

A. At 145 West 42nd Street, Sterling Sandwich Shop.

Q. How many doors from the building——

A. It is the very next building.

Q. You are the next building; in other words, that building at 42nd Street and Broadway, what is the number of that, 1476, known as the Longacre Building, has an en-

[fol. 586] trance on 42nd Street and also an entrance on Broadway, isn't that correct?

A. Yes.

Q. And your restaurant is immediately adjoining the entrance on 42nd Street?

A. Well, the restaurant is in the building right next to it.

Mr. Singer: He has got a restaurant, and go on and let us get to the point. I do not care if he has got ten restaurants.

The Court: Now that is over, let us go ahead with the examination.

Q. Do you recall sometime toward the latter end of December last year Mr. Rice coming into your restaurant?

A. Yes, I do.

Q. And he had been coming into your restaurant quite frequently, had he not?

A. Yes.

Q. Do you recall him showing you a counterfeit bill?

A. Yes, I do.

Q. With the word "counterfeit" written on it?

A. Yes.

Q. I show you Exhibit 5 and ask you if that is similar to the bill or a bill he showed you on or about that date?

A. Well, this, I do not know whether it is the same one or not, but I know that the one he showed me was a hundred dollar bill written "counterfeit" on it. It doesn't look like that one now. I know it was pretty nearly a new bill at the time. It was practically a new bill at the time I saw it.

[fol. 587] Q. Would you say that is the bill?

A. I wouldn't say.

Q. You couldn't say whether that is the bill or not?

A. No.

Q. What did you do with the bill when you got it?

A. When he showed me the bill it looked so real I asked him if he wouldn't let me take it and show it to the cashier, so that she could familiarize herself with a counterfeit bill. At the time I know the word "counterfeit" was written in there.

Q. Was it written or printed?

A. I just forget.

Q. All right.

Mr. Singer: He said "written."

The Witness: I think it was written.

Q. Are you sure whether it was written or printed?

A. I am not sure; I know it had the word "counterfeit" on it; I know that.

Q. You know it had the word "counterfeit" on it?

A. Yes, I am positive of that.

Q. Was that bill shown to your cashier?

A. It was shown to my cashier, and I believe several of the waitresses saw it too.

Q. Then, after you showed it to the cashier and the waitresses, did you give it back to Rice?

A. Yes.

Mr. Kamber: Your witness:

Cross-examination.

By Mr. Singer:

Q. You say the bill was shown to them. You mean a bill was shown?

A. A bill was shown.

[fol. 588] Q. You do not mean that bill?

A. I do not know whether it was that bill or not.

Mr. Singer: All right; that is all.

Mr. Kamber: That is all. Is your cashier here?

Mr. Singer: Do not do that while the witness is on the stand. Do not ask him any questions outloud.

Mr. Kamber: All right; that is all, that is all.

The Court: That is the case?

Mr. Kamber: That is our case.

The Court: All right. Now, then, the case is closed.

Motions to Dismiss

Mr. Wegman: If your Honor please, on behalf of the defendant Berger, I move for a dismissal of the indictment, and particularly direct your Honor's attention to the fact that the only testimony in this case which in any way——

The Court: Please. Make your motion, but do not argue it.

Mr. Wegman: All right. My motion is for the dismissal of the indictment as against the defendant Berger, on the ground that there is no credible evidence to support it.

The Court: Any other motions?

Mr. Wegman: I would like to make some other motions, if your Honor please, particular with respect to the conspiracy count, that the evidence adduced, without in any way [fol. 589] appraising its value or its weight or its credibility, fails to support the charge of conspiracy set forth in that count of the indictment. I respectfully refer your Honor to the case of Tinsley v. United States, 43 Fed. 2nd, page 890. And in addition to that I move for the direction of a verdict of acquittal.

Mr. Crooks: I renew my motions, if your Honor please, made at the close of the Government's case, in so far as they relate to the counts 7, 8 and 9.

Mr. Kamber: I renew my motions made at the close of the Government's case to each and every count in the indictment, and ask your Honor that so far as the defendant Rice is concerned, on account of insufficiency of evidence, that your Honor direct a verdict in favor of the defendant Rice.

The Court: The motions are, each and every one of them made by each and every one of counsel, denied, with an exception to each denial separately, as to each count. I think that covers it all.

(Mr. Wegman summed up to the jury on behalf of the defendant Berger.)

(Mr. Crooks summed up to the jury on behalf of the defendant Jones.)

(Mr. Kamber summed up to the jury on behalf of the defendant Rice.)

[fol. 590] SUMMATION IN BEHALF OF DEFENDANT BERGER

(Mr. Wegman summed up to the jury on behalf of the defendant Berger as follows):

Mr. Wegman: Gentlemen, in his opening address the Prosecuting Attorney told you that this case is in the nature of a cross-word puzzle, that there were several pieces missing and in the course of the trial he would try to put those missing pieces in. Passing over the mixing of metaphors, and assuming that this case is a jig-saw puzzle, the

missing pieces are still missing, and as a result of this trial there are more of them out than there were when the case started.

I think that it would be of some useful purpose if we tried, you and I, to rationalize this situation. In that way probably better than any other way we can get at the truth of what it is all about, because there has been an irreconcilable conflict between the testimony of the witness Katz whose fate isn't before you, and the testimony of other witnesses, that is the defendants themselves who are now on trial and whose fate does rest with you. We have a case presented by the Government which on any analysis depends solely and only on the testimony of Katz. I am now talking, gentlemen, only with respect to my own client, that is the defendant Berger. I do that not because of any belief or opinion on my part as to the other defendants, but because they are adequately represented by other counsel, and I am not going to invade their province.

So far as the defendant Berger is concerned the only [fol. 591] testimony in this case which in any way whatsoever indicates that he may have been guilty of the crime of passing counterfeit money is the testimony of Katz. There hasn't been a suggestion of other evidence in this court room.

You have therefore Katz on the one hand who tells his story, and Berger on the other who tells his. In reaching your conclusion as to whether or not Berger is guilty as charged you have to decide whether Berger is telling the truth or whether Katz is telling the truth. Katz, a confirmed criminal, who on the witness stand boasted, literally boasted in a sneering way that he had been arrested in every city in the United States, who has been in jail more often than out, and who admitted on the witness stand freely that he was guilty of every single one of the nine counts in this indictment, for which under the law he might be sentenced to 122 years in prison and thousands of dollars in fines.

Berger on the other hand ten years ago when he was just a youngster made a mistake. I assume for the sake of this argument that he did make that mistake. There may be some question as to whether or not he was in fact guilty, but the record is there and we will assume now that he was guilty at that time, ten years ago when he was twenty years

of age, of being involved in some way in a hold-up or something which resulted in a conviction of robbery in the third degree, on his own plea, not after trial, not after a verdict by a jury. After he came out of Sing Sing, in which institution he served four months, he has led a clean, honorable, [fol. 592] decent and respectable life. Witness after witness took the stand, men of reputation, men of good repute, men of standing in the community, and testified to his good character. I hope that you gentlemen will appreciate what it meant to those people who came here as character witnesses. I hope that you appreciate the fact that they must have had an overwhelming good opinion of Harry Berger, a genuine affection and respect for him, to subject themselves to the ordeal of coming to court to testify to their good opinion of a man who was charged with the heinous offense of counterfeiting, and whom they knew before they came into court, although they did not know it in the intervening years, had served a term in states prison. If in the past eight or nine or ten years Berger's conduct had not been exemplary, if in that time he had not won for himself a place in the walks of life among respectable citizens, and had not earned the respect of these men and all of his other neighbors, because these witnesses simply reflected the attitude of the community, those men would not have come in here, they would not have gone out of their way, they would not have taken the witness stand to be tormented by the Assistant United States Attorney in cross examination, if Harry Berger were not in their opinion an honest man. You have the picture of the two individuals, Katz and Berger, and you have your choice as to which of the two you will believe.

As I said a moment ago, let us try to rationalize a little bit and see where it leads us to. Did Berger have any motive for participating in this conspiracy? Did Berger have [fol. 593] any motive for aiding and abetting in the passing of a bill on Samuel Berger, and in possessing that bill, aiding and abetting the possession of that bill at the time it was passed? Mark you, gentlemen, the Government in this case makes no claim that Harry Berger ever passed a counterfeit bill; the Government in this case makes no claim whatsoever that Harry Berger possessed the counterfeit bill at that time that it was passed. The most that is charged in the indictment as amplified by the bill of par-

ticulars is that Harry Berger aided and abetted someone in doing that, that "someone" so far as the charge is concerned being Edward Jones. Now then, what motive could Berger have had? Has there been any intimation, even from Katz, that Berger was to profit by the transaction?

You remember Katz' story. It reminded me of the line that used to appear regularly on the sporting pages of the newspapers, I think Grantland Rice was the author of it, "Tinkers to Evers to Chance." Here it was "Katz to Berger to Jones." That is the course the counterfeit money took according to Katz, and the good money "Jones to Berger to Katz." Katz carried the counterfeit money in and Jones carried it out, and according to Katz all that Berger did was to hand it from one to the other. That is the only connection of Harry Berger to this case. There is no intimation, there is no suggestion that Berger was to profit to the extent of one cent, is there?

Now, does it seem reasonable to you, does it seem possible [fol. 594] to you that this man who over a period of eight or nine years had tried his utmost to live down an incident in his past, that this man who had succeeded too in living down that incident to the extent that won for him the respect and good wishes of his neighbors in his community, do you think that that man would take the wild chance of jeopardizing everything he had lived for, of jeopardizing his entire future, merely to act as a conduit between Katz and Jones? I think it is just too silly for words.

On the other hand, did Katz have a motive for that story? The testimony has been, and I am sure you will recall it, that Katz first talked with the Agents of the Secret Service on January 18th, some twenty days before he was finally arrested. He made a full confession of his own part; and Mr. Godby, with commendable frankness, said to you that he was sure that Katz expected some consideration for bringing in evidence about the others. Katz knew at that time when he told Godby all about this case, Katz knew that he faced 120 or 140 years in the federal penitentiary, and Katz knew that if he might make a deal with the prosecuting officers that he might get off lightly. And he was justified, he was right, because he made such a deal, and it is on this record that if Katz would tell his story on this witness stand as he had told it to the Secret Service Agents before the case started, that the District Attorney would

arbitrarily, without consultation with the court, dismiss every single charge against Katz except the one count for conspiracy which carries a maximum penalty of two years in jail. So Katz, who by his own word, is guilty of every [fol. 595] single charge that is made in the indictment, is limited to a maximum of two years in jail, and Harry Berger, who, if Katz be believed, was nothing but——

Mr. Singer: I object to that, how much Berger can get.

The Court: That isn't proper. You have already stated what Katz could have had, that has come out already. The question of sentence rests entirely on the conscience of the Court, and the jury haven't anything to do with it.

Mr. Wegman: I understand that, your Honor.

The Court: Then do not tell them what he could get because you do not know what he would get even if found guilty.

Mr. Wegman: I do not think he is going to be found guilty.

The Court: Then you cannot say what he would get.

Mr. Wegman: I haven't suggested that; if there has been any intimation it has come from the Assistant United States Attorney. Katz, the man who had no place to sleep, who had no place to go after he had his fight with his wife, and for whom Berger, out of the goodness of his heart, got a place to sleep, the man whom Berger later found in that apartment with another man in an undressed or semi-dressed condition, and who therefore had for Berger an [fol. 596] undue animosity. If I weren't afraid it would sound funny I would suggest to you that Mr. Katz' name ought to be "Rat," because that is just what he was on the witness stand in appearance, in demeanor. In every way he is a squirming, slinking, slimy rat, and the District Attorney is going to ask you to take his word, his testimony in preference to the testimony of Harry Berger. You had a change to observe him on the witness stand, you had a chance to draw your own conclusions as to whether he was telling the truth. It seemed to me that every word, every movement of Berger demonstrated his sincerity, undoubtedly, unquestionably.

There are a number of things in this case which reflect on the veracity of the participants. The word "liar" has been hurled back and forth; other accusations have been

made. There was an attempt on the part of the District Attorney today to demonstrate that Berger wasn't telling the truth when he said on this witness stand that so far as he knew Jones hadn't been up to that apartment on 57th Street. I will have more to say about that apartment presently. And so the District Attorney asked him "Didn't you tell me that you introduced Jones to Katz?" Berger said "I did not." He said "Didn't you say it in the presence of Mr. Ameli," and he asked Mr. Ameli, the United States Attorney, to stand up. Mr. Berger said "I did not." Then the case went on. Today Mr. Singer put witnesses on the stand to testify that Berger did say that. Those witnesses told you that it is part of their instructions, one of the fundamental rules of the service, that when a defendant [fol. 597] makes a statement it must be reduced to writing and he must be asked to sign it. And the two witnesses who were produced here today, Agent Kett and Agent Godby, both of them told you, both of them told you that this so-called statement, this so-called admission, this so-called confession of Berger that he had introduced Jones to Katz, which is an important incident, had never been reduced to writing and Berger had never been asked to sign it. And did Mr. Ameli take the witness stand to say that he heard Berger make that statement? He was in court; did Mr. Singer call him? Did Mr. Singer take the witness stand to say that he heard Berger make that statement? He wouldn't say it under oath—

Mr. Singer: What do you say I wouldn't do? I object to counsel making comment on what I might do under oath. I haven't been called as a witness.

Mr. Wegman: All right, I will withdraw the statement he would not, I will say he did not.

Mr. Wegman: The suggestion has been made that I should have called Mr. Singer to the stand in his own case in rebuttal. I will let you gentlemen draw your own conclusions on that.

Now then, Mr. Singer tried to attack the veracity and truthfulness of Mr. Berger by other means. There has been much talk about this prosecution or this arrest for perjury. There is one thing that is fundamental in our law. There are certain rules and certain prescribed forms, and because there is a presumption of innocence ordained

[fol. 598] by the Constitution of the United States it is fundamental that a mere arrest is never any indication of the commission of a crime. It is a funny thing, the fact that that feeling is inborn in an American came out when the younger Mr. Turoff was on the witness stand, when he was asked by Mr. Singer, who was trying to impress upon you that Berger was a criminal, "Would you change your opinsion if you had heard that he was arrested for perjury?" Mr. Turoff said "No, only if I knew that he was convicted of perjury." Has there been any conviction of Harry Berger for perjury, or any testimony that he was convicted? The truth of the matter is, and it came out in the testimony, that the Grand Jury of the County of Queens refused to indict him on that charge which was instigated by Katz in his mad attempt to bedevil Berger, to get even with Berger for some crazy, fancied, imagined wrong that Berger may have done to him.

There was a little play in this court room yesterday when the District Attorney offered in evidence this application for a pistol permit. On that pistol permit there is a question "Have you ever been arrested, yes or no." The word "yes" is crossed out. That incidentally is an application for a license "to carry a revolver or pistol concealed upon my person or possession on the premises 4348 46th Street, Woodside, for the reason that I collect a large amount of money in rent and have it in my possession" and under those circumstances he desired a permit for a pistol for protection. The grievous offense for which Berger was arrested, the perjury which makes his testimony valueless, [fol. 599] is that he crossed out the word "yes" on this application, that he did not write across the face of it "I am an ex-convict." But he put his finger-prints on the back. You remember the little act here yesterday when the District Attorney asked his Honor to permit him to take Berger's finger-prints on the witness stand, and he was told to produce the finger-prints that were taken when Berger was arrested in this case, and those finger-prints were brought here because they borrowed his Honor's magnifying glass to look at them——

Mr. Singer: Are you talking about finger-prints——

Mr. Wegman: I am talking about a thing that happened in this court room.

The Court: That is not in evidence.

Mr. Wegman: It happened in the court room.

The Court: I do not know and I do not think anybody else can say except those that examined them what papers were examined. That is not in evidence, and the jury will disregard that.

Mr. Wegman: Were those finger-prints produced here to show you that these were not Harry Berger's finger-prints? Do you think for one single solitary second that if the finger-prints that were taken of Harry Berger when he was arrested in this case did not check absolutely with these finger-prints, do you think that the District Attorney would have neglected to bring that fact out? And isn't it abso- [fol. 600] lutely necessary to conclude therefore that these are Harry Berger's finger-prints? And if they are his finger-prints, didn't the Police Department have a record of the fact that he had served in Sing Sing? You know, it is a matter of common knowledge, when a man goes to Sing Sing his finger-prints are on file at Police Headquarters in New York and at the Department of Justice in Washington. And any time anybody ever makes inquiry with a set of finger-prints, those prints are brought out and checked. That is how the District Attorney in this case knew that Harry Berger had served a term in Sing Sing ten years ago, because when he was arrested here and those finger-prints were checked up he got the record. And so the fact that he had been convicted was available at the time he filed that application, the original application for a pistol permit. He wasn't trying to cheat anybody, he wasn't doing any human being out of anything when he didn't say on here that he had been convicted because he made it perfectly possible for the State of New York and the Police Department of the City of New York to check up and find the record from his finger-prints. And he knew, just as every person knows (it is common knowledge), that when an application is made for a pistol permit the finger-print records are checked.

And so with the real estate license about which there was so much to do. Did Harry Berger lie, commit perjury when he swore in his application for a broker's license that he had not been convicted of a crime? It was immaterial because it has been held in New York that the mere fact [fol. 601] of a conviction for a felony does not bar one from receiving a broker's license.

Mr. Singer: Your Honor will charge the jury what the law is, and that is not part of this case and happens not to be the law, and I object to it.

Mr. Wegman: Your Honor, the District Attorney takes issue on that; I will cite him to the volume and page.

The Court: The jury does not pass on questions of law. If you want to aid the Court to find out what the law is, that is another matter, but it isn't for the jury. The jury will take the law as I give it to them, not as counsel gives it to them.

Mr. Wegman: Whom did he cheat, whom did he defraud? Could there have been any intent to cheat or defraud anybody in that application? Is there any possible similarity between that sort of misstatement and cheating somebody with a counterfeit bill?

Harry Berger handled thousands of dollars a month of other people's money. One of the witnesses told you that for several month's time Harry Berger had collected for him and turned over to him between twelve and fifteen thousand dollars in cash—never any question about a penny of it.

Harry Berger told you that he has no need of money; he has got a fine automobile, he has a fine home. What [fol. 602] would he be fooling around with counterfeit money for? And it is because it is so ridiculous to think that he would seek to profit from counterfeit money that not even did Katz have the audacity to suggest that Harry Berger had passed counterfeit money. The best that he could do, fourteen days after Eddie Jones had been arrested, fourteen days after it appeared in every newspaper in the city that Eddie Jones had been arrested for passing counterfeit money, fourteen days later when Katz spoke to Agent Godby and knew that Jones had been arrested, he figured "This is how I will get Berger in, I will say that Berger introduced Jones to me."

That reminds me of another little matter, that description given by Jones at the time of his arrest of the man from whom he obtained the counterfeit money. I am not going to ask you to surmise who is meant by that. I do suggest to you, though, that Berger and Jones were good friends, that is in a business way; and Jones told you here in court very definitely and positively that Berger had never had anything in the world to do with these two coun-

terfeit bills that came into Jones' possession. If it were true that Berger had given Jones those bills, or had had some part in the transaction whereby Jones acquired those bills, you can rest assured that the description would have been entirely different than Berger's. The mere fact that in some respects it might fit, Berger is the best possible proof that Berger had nothing in the world to do with it. Did you notice that one of the many aliases that Katz had [fol. 603] used when his criminal record was produced in this trial was Harry Katz? And the first name, the name mentioned by Jones as the name of the man from whom the money came was Harry, do you remember that?

Then we have some other inherent contradictions in Katz' story, many of them, too many for me to remember. But one that occurs to me at this time is, on his direct examination you will remember that Katz said that when Berger brought Jones up to this apartment Berger asked Katz to give Jones some counterfeit money and Kats said "I don't know Jones, I don't trust him, I won't give him the money directly, I will hand it to you and you can hand it to him, and he can hand you the good money and you can hand it to me." Tinkers to Evers to Chance and backwards. "And," said he, "When I produced the money and passed it over the girls were all sitting around and they wanted to see this counterfeit money, and they all handled it, and made some remarks about it." But then apparently he suffered a change of heart while he was on the witness stand, he thought to himself "Well, why should I lie about the girls?" And on cross-examination he changed his testimony; on cross-examination he said that he and Berger and Jones went into the little ante room, and the girls were sitting and chatting over on the other side of the room, and the girls didn't know what was going on.

At the close of the Government's case his Honor dismissed the charges against the girls. Incidentally I wonder how [fol. 604] many of you noticed the scowl on Katz face when his Honor dismissed Ray Katz. Jack Katz built this case to get Ray Katz in jail, and he thought he might as well drag in a few other people while he was at it.

I do not know what his motive may have been as to Mr. Rice or Mr. Lee, but the charge in this case is a conspiracy between Rice and Katz and Berger and Jones. Not even Katz claimed that Rice and Berger knew one another; there

has been no suggestion of that. I think it has been established beyond any possibility of a doubt that Rice and Berger never met, never knew one another. And so far as Mr. Rice is concerned that is a separate case.

The question is did Katz and Berger and Jones conspire and as a result of that conspiracy did Jones go out and pass a hundred dollar bill on Berger the tailor, did he get that hundred dollar bill from Harry Berger, the defendant. Is it possible to believe that Berger conspired with Katz? Long before this case was made, long before Katz made his statement to Agent Godby, Berger and Katz were definitely on the outs. Berger had met him in this apartment—you remember the testimony—although there was a suggestion made by Mr. Godby that Katz had met Berger in Sing Sing which is too ridiculous for words because the record is clear that Berger was out of Sing Sing in 1925 and Katz did not go there until 1928. But Katz testified that he first met Berger in December, around December 15, 1933. Berger said the same thing, and undoubtedly that is true. They [fol. 605] met in this apartment on West 57th Street, and apparently Mr. Singer thinks that that is a terrible offense. Harry Berger went to that apartment on 57th Street, and that is a horrible crime, that ruins his character, that damns him, holds him up to the scorn of the community, because every character witness was asked "Did you know about that apartment on 57th Street?" What is all this talk about that apartment? Has there been any suggestion that there was anything wrong with it except for Katz' testimony that it was in that apartment that the Katz to Berger to Jones transaction took place? Anything wrong in a young man of thirty, unmarried, going around with some young lady who is a registered nurse who happens to have an apartment on '7th Street? Is that a crime? Is Harry Berger on trial here today for going around with Audrey Siegel or for being friendly with Audrey Siegel and Audrey Siegel's roommate, Joyce Molner? Is that the crime of which he is accused, or is he accused of passing counterfeit money?

Sometimes in the course of this trial the issues have been quite confused. I did not know whether Harry Berger was being tried because Mr. Singer and I happened to be old time enemies or whether he was——

Mr. Singer: That is not in the record.

Mr. Wegman: Or whether he was being tried for counterfeiting——

Mr. Singer: Mr. Wegman is stating something that is not in the record.

[fol. 606] The Court: There is nothing in the record about any enmity between counsel.

Mr. Wegman: That would almost come under the head of common knowledge.

The Court: And the jury will disregard it; there is no such evidence whatever.

Mr. Wegman: You gentlemen have seen the animosities in this court room, they have been paraded in front of you, and I am certain each one of you is able to draw his own conclusions. And I am certain that sometime or other in the course of the past four days of this trial that you must have wondered whether Harry Berger was being tried for counterfeiting, or whether he was being tried for visiting this apartment on 57th Street, or whether he was being tried for having gone to Sing Sing ten years ago, or whether he was being tried that he said no instead of yes on this pistol permit, or whether he was being tried because on his application for a real estate broker's license he did not say he had been convicted, or whether he was being tried because Wegman was his lawyer——

Mr. Singer: Wegman wasn't his lawyer when he was arrested, if you are talking about that. Make sure about that.

Mr. Wegman: You didn't take the witness stand, Mr. Singer. I made one or two notes during the cross-examination of Harry Berger by Mr. Singer. I was waiting to see whether Mr. Singer asked him a single question about counterfeit money—not a word. He asked him about almost everything else under the sun, but never once asked him [fol. 607] a question about the charge made in this indictment, or about counterfeit money. And when these little colloquies took place between witness and prosecutor, when there arose a question of veracity, I leave it to you gentlemen whether or not Berger was telling the truth or whether or not Singer who was asking questions was telling the

truth does not indicate whether or not Berger is guilty of the crime of conspiracy and of passing counterfeit money. But, be that as it may, there has been no proof offered here that Berger wasn't telling the truth, because in rebuttal who did the District Attorney produce? Not himself, not Mr. Howard Ameli whose word cannot be questioned, Mr. Ameli whom he asked to stand up when he was cross examining Berger. Mr. Ameli was in the court room this morning; he wasn't called, and he wasn't asked whether Berger made that statement that he had introduced Jones to Katz. But Mr. Kett and Mr. Godby were called, and Mr. Kett and Mr. Godby told you that it is part of their regimen, part of their regulations to reduce everything to writing; and this wasn't reduced to writing and Berger wasn't asked to sign it. I examined Mr. Godby at some length on the state of his recollection. Remember, this case isn't an old case, his recollection doesn't have to go back a couple of years, it only has to go back two months because January 18th was when he first met Katz, and he worked on this case ever since he told you, except for a week when he was in Chicago; and in that short time he couldn't remember a single date that Katz had given him about his first meeting with Ber- [fol. 608] ger. And yet he testified that he believed that Katz told him that he first met Berger in Sing Sing. And when I took it up on cross-examination and explored the subject a little bit it developed that *that* there wasn't any real basis for that belief, he had no recollection one way or the other but he said it just the same. And it sounds very impressive "I believe he told me that he first met Berger at Sing Sing." That is obviously impossible, it couldn't have happened. Katz and Berger both say the same thing, that they first met on December 15th, and so apparently Mr. Godby's recollection isn't so very good. And he was depending only on his recollection when he contradicted Berger on that. Berger has lived with this case, so far as Berger is concerned. Everything that happened from the moment that he was called down to the office of the Secret Service is engraved on his memory. Whose recollection is more trustworthy?

Now, gentlemen, another thing that I think you may be interested in as some sort of aid in reaching a conclusion as to whether or not Harry Berger is guilty of the charges

in this indictment, Mr. Singer made a lot of attempts to get before you the fact that Harry Berger had been arrested for perjury on this charge in which the Grand Jury refused to indict, and that Harry Berger had been guilty of this and that and the other thing in his applications for licenses, because his record from ten years ago to date was otherwise absolutely clean. Mr. Singer was very sedulous and very [fol. 609] pointed in trying to keep the number of arrests, the 21 arrests of Katz out of the record, but Katz on the witness stand boasted about it, that is how it got before you.

I said when this case started my only interest was to see that the whole truth was laid before you. So far as the defendant Harry Berger is concerned you have had everything. Berger didn't have to take the witness stand. If he didn't the constitution of the United States prevents the District Attorney or the Court from commenting on that, and the Court would have had to instruct you that you couldn't consider it against him at all that he didn't testify. Berger took the witness stand because we wanted to bring out the whole truth.

Now, when I asked Katz on cross examination whether he had made a statement in the detention room to Mr. Wassenberger and to Mr. Rappaport that Harry Berger was innocent of the charge, Katz denied it. Apparently my information was wrong, because it was Mr. Wassenberger who informed me, and Mr. Rappaport wasn't present, because Mr. Singer promptly called Mr. Rappaport and he said he was not there. But I knew Wassenberger had been there, so after a couple of days I finally succeeded in serving a subpoena on Mr. Wassenberger, and I brought him to court this morning. Mr. Wassenberger came to court, and you heard him. Mr. Singer seemed to have some doubt as to the veracity of that testimony. Mr. Wassenberger told you there were three Deputy Marshals there at that time. [fol. 610] Those Deputy Marshals are under the control of Mr. Singer, they are in this building. If Wassenberger wasn't telling the truth about Katz' statement, why weren't those Deputy Marshals brought in here to tell you that that didn't happen? I will tell you why, because Wassenberger was telling the truth, and that did happen.

All yesterday afternoon Jack Katz sat over there on the other side of this court room and listened to the testimony, and there were many contradictions of Jack Katz in that

testimony, but Katz wasn't brought back here to testify in rebuttal, Katz wasn't brought back here to be asked about these various things where there was a disparity between his testimony and the testimony of the defendants.

I suppose I could go on talking interminably on this subject because, gentlemen, I mean it sincerely, my heart is full of it. I think that this prosecution is a terrible thing, and I think that an innocent man has been hauled into court to answer charges for no other crime than that he happened to have a girl friend on 57th Street to whose apartment he went occasionally, and because Eddie Jones happened to be a tenant in one of his buildings.

The law says, and his Honor will undoubtedly so charge you, that there is a presumption of innocence, that until you are convinced beyond a reasonable doubt of the guilt of the defendant Harry Berger you must presume that he [fol. 611] is innocent of the charge. Because of that rule the procedure has grown up that the District Attorney has the last word, because the District Attorney has the burden of proving guilt, and the man with the burden has the last say. And so when Mr. Singer gets through there is nothing that I can say in answer to such of his statements with which I may take issue. He comes after I am through, and if there is anything that I have said that won't stand analysis, you can depend on Henry Singer talking about it; and he may even talk about a number of things that are easily refutable but I cannot answer him. And so I must rely, as I am perfectly willing to do, on the good common every day sense of you gentlemen who are drawn from the walks of life from which we all come. In your composite self you have had experience with human beings and with human nature. You have seen the accuser, you have seen the accused; you know the record of the accuser, you know the record of the accused. Can there be any doubt which of the two are telling the truth where there is a conflict in their statements? Is there any room for a doubt? Katz, who if he didn't testify that way, who if he didn't testify the way that he told Godby in the office of the New York Daily News when he wrote that piece of fiction, that noble story, with the collaboration of the editor of the News who called in Mr. Godby, if he didn't testify that way knew that he was going to go to jail on nine counts of an indictment and he might have had a penalty

of 122 years inflicted upon him, or any part of that; and [fol. 612] because he kept his part of the bargain and stuck to that story, true or false, the most that the Court can sentence him for is two years. There is 120 years of consideration. Do you think that that little rat would hesitate one moment to send his own mother to jail to save himself from 120 years or some part of it? Do you think it made any difference to that little rat whether he was telling the truth or not?

Now, of course there was a motive for Harry Berger's testimony. I do not say that he came here as a disinterested witness. I am not that foolish. But I say to you in all sincerity that while Harry Berger had the motive of keeping himself out of jail in this prosecution, and had the motive of having you gentlemen bring in a verdict of not guilty, that Harry Berger came to you with a background of ten years of honest living, that Harry Berger came to you with half a score or more of witnesses who testified as to his good character, as to his excellent reputation, his honesty and trustworthiness and truthfulness, so many witnesses that finally his Honor had to suggest that there ought to be a limit, and I agreed, the Court was unquestionably right. I could have paraded several hundred before you; that whole community would have been glad to come to court.

But who was there to say a good word for Katz, and who could say a word for Katz' reputation for truthfulness and honesty?

Gentlemen, you saw the witnesses, you have heard the [fol. 613] testimony. Whether this boy who has been trying to live down a mistake is to have his life ruined and is to go to jail, to the Federal Penitentiary because of this case rests entirely with you. Even on the Government's own case, on their own witness Katz, Harry Berger defrauded nobody, Harry Berger cheated nobody. On the uncontradicted proof in this case for ten years he has been honest and respectable and respected. Is all that to go for naught, is all that to be thrown over in a moment, and thrown over solely and only on the testimony of a Katz? I do not think so, and I do not think you gentlemen think so.

This case merits your deep consideration. I do not ask you for your sympathy for the defendant; I haven't once suggested sympathy. I ask for your honest, innate, inher-

ent sense of justice, and when you bring that to bear on this case your verdict must inevitably be not guilty.

Thank you.

[fol. 614] SUMMATION ON BEHALF OF GOVERNMENT

(Mr. Singer summed up to the jury on behalf of the Government, as follows:)

Mr. Singer: May it please your Honor, Gentlemen of the Jury: All these compliments have put me in rather an embarrassing position. Sometimes after you have heard the same phonograph record about forty or fifty times, you get so that you can almost play the tune from memory. My good friend Morris here has sung that tune about me being such a marvelous lawyer and so astute, so sharp, so wise, that sometimes it even strikes sort of a sour note or key in me. Of cour-e, I do not think I am as good as he tries to tell people I am, because if I were, why, these fellows all ought to throw up their hands and not even try battling with me, which you see isn't so. That is part of the old, well, what will we call it, just part of the old, well, let us say, atmosphere. That is not such a good word, but it is part of the act, let us say, it is part of the act. And I like Morris. You see, he is a nice old fellow, and I want to tell you one thing, and I am doing this first, it is not that I do not like him, because I really admire the man, I like him, and perhaps my feeling goes for him more than liking because I admire him. He has got a gall that I have never never seen in my life. He cannot see a thing, he cannot read, he has to have the clerk help him look at a paper, he doesn't know the name of a single witness, he doesn't know the name of anybody connected with the case, but let a witness make a misstatement, let a single paper have one dot [fol. 615] missing or one "t" uncrossed, and old Morris Kamber will pick it up as fast as you can think about it.

You know the old gag of trying to surround the defendant, every lawyer tries to do that, to surround the defendant with somewhat of the lawyer's own air. When he says to you, "We admit we met Katz, we admit we did this, we admit we did that," that is again part of the old act. You know it. Get yourselves a new act, boys or back to the woods. That is all it is, "We admit." Now, Kam-

ber knows very well that he admits nothing. If he wants to admit for his client, that is a different situation, but do not let him, with that way of his, try to surround the defendant with the air of Kamber's respectability, because that doesn't accrue to the defendant. When a man hires a lawyer he hires a spokesman, he hires an advocate, but certainly the fact that the lawyer is reputable, honest and trustworthy, brings nothing to the client in the cause except the skill of the lawyer and the faith that the Court might have in the conduct of the trial by that lawyer.

Now, I plead a cause for the Government, and my position is slightly different. It is true that the Government's case can be prejudiced by what I might say or do, because after all their clients can talk for themselves, the three defendants can talk for themselves, but the Government can't utter a word. And when they start attacking the prosecution they cannot attack the Government because [fol. 616] that would palpably be so stupid that no counsel would attempt it, especially the type of case like this. They couldn't attack the Court or the Grand Jury for having instigated the proceeding, or the Court for having permitted it. Well, who is the handiest man to attack? Good old Henry, the District Attorney. Good old Henry can stand there, he can take it, but when he starts to dish it out himself, they all start to holler, "You are unfair, Mr. District Attorney, you are trying to twist a witness." But, oh, they can twist the questions, they can twist the Government, they can sit up in their offices and devise ways to pass counterfeit money; "but don't let the Government touch me, that is unfair; please leave my client alone." Or "You are hollering about jailbirds." "Please," they say, "do not take the word of a jailbird." One lawyer hollers, "Don't take the word of that man, he is a jailbird," and the other lawyer hollers too, "Don't take his word, take my client's word," although his client has a record. And then the third lawyer says, "I do not care if they are all jailbirds, that doesn't make them any worse here." But you can see, after all, I could talk to you for hours along that line, and not a single word of it would ever bring home to anybody's mind the one point, the only point in this case, the one that nobody can dispute, convict or non-convict, that is, the indisputable evidence of your own eyes. They say the hand is quicker than the eye, and

[fol. 617] that may be the reason why some of these lawyers do not get by with half the stuff that they try to, because you can hear it even if you can't see it. But let me tell you that these bills, these bills that you can touch and feel and throw around, there they are, those pieces of paper that were passed on people, you can pick it up, these very pieces of paper made in the resemblance and similitude of real money, these bills you can't deny. You know, after all, evidence is merely talk. Katz said that Rice gave him money. Katz said, "I gave Berger the money, and I saw Berger give the money to Jones," and if there was no money here, why, then, you would have an instance that my friend, Mr. Kamber, is hollering about, uncorroborated testimony of a jailbird. But you can go further than that in this case: You can go in that jury room, you can touch, feel, even fondle the counterfeit money. That is no jailbird, that is something that you can sense, you can feel, touch, taste it and smell it, if you like. It is rotten, pshaw, bad money.

Now, one lawyer in the case seems to think that I am his enemy, probably. I don't know. You know, gentlemen, I don't know. There is the same example of surrounding your client, taking your coat off, and I do not mean it just verbally, but I mean physically it is taking your coat off and saying, just as the old bull-fighter does, wave the coat and the bull is misled, the coat or the cape is waved and the bull goes one way while the fighter steps aside. Now, [fol. 618] my friend here, I do not even know his name really now, because he never meant anything to me and never will, he seems to think I am his enemy, and he seems to have a feeling in his mind that because I am his enemy I am going to try to convict a client that he represents. But he seems to forget too that this man was arrested long before he ever heard of this lawyer or before this lawyer ever represented him——

Mr. Wegman: Now, if your Honor please, is there any evidence of that in the record?

The Court: I do not know.

Mr. Singer: Well, if there isn't I haven't heard anything to the contrary, just like you didn't hear I was his enemy. And if he imagines I am his enemy, I really hope that some time all of those things that he imagines may come home to roost. But I certainly do not want you to feel

that because he has a feeling that I do not like him, that his client is going to be hurt, prejudiced or affected in any way. You bear in mind what I say about that, because you will find, as you have found through this trial, that the defense can resort to any tactics whatever, but the Government has got to hew to the line, the Government has got to show crime and criminals, that it is not necessary for the Government to go down to their level.

Before the witness Katz was placed on the stand I, speaking for the Government, under no obligations whatsoever, [fol. 619] counsel knows that, the Court knows it, and if you have ever sat in criminal cases you know it, I, under no obligation whatsoever, said, "Gentlemen, I would like to say something for the record——"

Mr. Wegman: Now, if your Honor please——

Mr. Singer: If you want it read I will have it read——

Mr. Wegman: If your Honor please, I want to object to these remarks. Mr. Singer is forgetting the records of certain cases on appeal——

The Court: If you have any objections, unless they are very material, you should reserve them.

Mr. Singer: You gentlemen were excused from the room, and when you came back I stood up and you heard me read into the record the fact that a certain transaction which had involved counterfeit money was brought to the District Attorney's attention; that as a result of that a witness named Katz was indicted, and that the United States Attorney had made a certain agreement concerning which the United States Attorney felt the jury should be apprised, and that is that Katz is going to plead guilty to conspiracy, and that he was going to be sent to a jail away from these defendants, and that he was to be kept separate from them during the trial and before the trial.

Now, you judge the Government by its actions. If this [fol. 620] is a lawsuit, as counsel attempts to have it, between two parties, you judge it that way, and you see whether or not the defendants haven't gotten every single break that they are entitled to.

Now, of course, I do not care what order we take them in. You take Berger: I do not want you to attempt for one moment to convict him because he did time, before, because the law is, and I agree with it, and it is common sense, that the fact that you committed a felony, a crime,

before, is no evidence that you committed the crime with which you are charged here. You have got to convict Berger, if you convict him at all, solely on testimony offered at this trial. But—and there is a big "but"—Berger doesn't come to you as a man-to-man proposition and say, "Gentlemen, you have heard the witnesses for the Government, now listen to me, and judge between us." No, he brings to court a parade of character witnesses, a parade of persons who are here to testify about the wonderful esteem and regard they have for Berger. And it is quite easy to say that if a man claims he has your esteem *or your esteem or your esteem*, that you should first find out how much do you know about this man that you claim to have such a high regard for, what has he been to you? Has he revealed himself to you, has he shown you his true nature, has he given you an opportunity to observe all of his acts, all of his conduct, all of his business and associations, [fol. 621] so that you can fairly and squarely tell the world at large, "I know the man, and I know people that know him, and he is on the level." But no, each and every single character witness called here testified that they didn't know anything about Berger, because Berger, just like the last man, Rice, was leading a comple- double life, Dr. Jekyll and Mr. Hyde, in the flesh before you, the two of them. Here was one existence in Queens, which was bound and surrounded by what was apparently the very nicest type of people, and when Mr. Wegman, if that is his name——

Mr. Wegman: Yes, yes.

Mr. Singer (Continuing:)—says that those people were subjected to indignity by being brought here, then I tell you that that indignity was visited upon them by Berger, because, had Berger disclosed to them his business associates, the fact that he had been convicted of a crime, and passing that aside, had he disclosed to them those vicious criminal associates in this den of iniquity up on 57th Street, they would not have come here and been subjected to the indignities that this lawyer speaks of.

It is nice to get on the stand and sit down and say "Yes, I think it is all right for me to do anything because I am not married, I do not care what I do. You are a liar, Mr. Singer, you are a liar, Mr. Godby, you are a liar, everybody is a liar." Well, that is a part of his nature, that is a part

of his life, to attempt to fool his own friends, and that is what the testimony shows here. That is an unerring sign-[fol. 622] post that points to the fact that his whole life in Queens has been a lie and a deception, and that he has been clever enough to deceive all those character witnesses.

Anyway, what is a character witness? He comes and says in effect, "Gentlemen, I know this fellow and he has always been a nice fellow as far as I know." What does that mean? That means that he wants you to believe that a fellow who has been a nice fellow, who has been a kind, gentle soul, couldn't possibly have done it. You can appreciate what that would mean to you, for example. Of course, after all, character witnesses do not state that they know whether he committed the crime or not, but in effect the whole argument to you is, "Well, he has been such a wonderful fellow, I do not believe he could have done it." But when you really and truly find that of all these character witnesses called, not a single one of them knew about his association with known criminals, not a single one of them knew about this association with harlots, that was not known to any one of them; now that is a peculiar thing, that of the twenty or ten or five character witnesses called not a single one had ever heard of any of these girls or these people that he associated with. And, gentlemen, you think back in your own lives and see if you have one true friend, or if you could pick out ten friends of yours who wouldn't today know of almost, between the ten of them, taking all [fol. 623] their knowledge collectively, who wouldn't know almost everything about you and your associates, and particularly when people attempted to state that they were his social intimates. Well, if they were, he certainly fooled them, and I know he won't fool you. That is the point, you see. Every argument must come back to the one point. He fooled his friends, and they all said so. Is he going to fool any one of you?

Mr. Wegman: Now, if your Honor please, I ask that the District Attorney be instructed to correct that misstatement of fact.

The Court: I do not think that kind of interruption should be made. This is argument, he is not stating the evidence. If you have any exceptions, you can take them at the close of the argument.

Mr. Wegman: There is no evidence that he fooled any of his friends.

The Court: Go ahead.

Mr. Singer: I say to you again that he fooled those friends. Not a single one of them knew about him, because if they knew what he has been doing over there at West 57th Street, if they knew of his association with these thieves, the men that Kamber called thieves, the man that his own lawyer called a rat, do you think that those honorable men would have come here and given testimonial as to his good [fol. 624] character? You have got the right to assume, you have got the right to think that he fooled them, and to say to yourselves, "This baby won't kid me."

Wait a minute, that isn't all. He took the witness stand and raised his right hand and swore by the ever-living God to tell the truth, the whole truth and nothing but the truth in this court. And when he did that, Gentlemen, he threw the burden on each one of you to decide for yourselves, did that man tell the truth when he testified? How are you going to judge whether a man tells the truth? There is nothing peculiar about that, there is nothing exciting about it. I will bring it down to every-day words. When a man comes to you in business and offers you a proposition, alleging it is so-and-so, and you make the purchase and you are gypped, that is to say, he sells you wool and when you get the merchandise it is about 40 per cent cotton, you say "I will wait for that baby. Next times he makes me a deal I won't believe a word that he says." And you have a right to, because if a man makes a habit of lying, if a man lies to you once in a business deal, you watch him forever afterwards. Because if I were to lie in court in my business when I made a statement before this Court and the Court found out that I was lying, he would say, "I will watch that baby Singer, every time he opens his mouth I will check up on it."

[fol. 625] Berger takes the witness stand and swears he is going to tell the truth, and I want you to apply to him the same yardstick that you apply to every person that you do business with. How do I know who is telling the truth? Why, there are many ways. You can notice by the look on his face, you just note his facial expression and his environment, education, and social background. I do not want you

to judge him by any mistakes in English that he may have made, or grammar. He made many, but that isn't what you are to judge him by. But there you are, a man is talking, and then you find that he lied under oath at least ten times. Now, he was a Notary Public, he took the oath himself to become one. Not only did he lie when he got the job, but can you imagine the kind of a Notary Public a man would make who would lie when he became a Notary Public. Could you imagine the Clerk of the Court or the Court imposing oaths on people to tell the truth in proceedings and lying before they became clerk or judge about a very material part of the qualifications for the job? Now, has he lied to get a pistol permit? Has he lied to renew it? Has he lied to become a Notary Public? Yes, he admitted he lied. He lied to become a real estate broker and he admitted he lied. Why should you believe him? You answer it, and I will be satisfied, no matter how you answer it, because Gentlemen,—and I will have to stop pounding this table, it is getting kind of weak,—Gentlemen, remember this, that the [fol. 626] best arguments are those that are couched in simple words, indisputable facts. Facts are stronger than words. This is a piece of wood. I might testify and bring forty people to say that this was made of gold, but if you took your penknife and scratched it and found it was wood, you would have a right to go in the jury room and say that "All those experts are crazy, it is wood. I burned it with a match and scratched it with a knife." Now, all the talk of lawyers, all the talk of psychology, all the calling of names and yelling and screaming can't get over the big point that he is a liar by his own admission. I do not like to call a man a liar, it is a harsh word. Some people would rather say he was a man that was sort of mistaken, slightly in error. But I feel in this instance I have the same privilege that the defendant had. Very blithely and with a great show of gusto he said, "Singer, you are a liar and you know it." Well, I do not say, "Berger, you are a liar and you know it." I say, "Berger, you are a liar and you admit it." Let him answer that one. And if what his own lawyer says is true, if a man lies in one matter he may lie in everything so throw out everything he says, and throw Berger at last where he really belongs.

Gentlemen, his story is so inconsistent. He says when he was a boy he was convicted, the police framed him and

he was sent to Sing Sing. "My lawyer was Mr. Kesselman. [fol. 627] He did me a great injury when he pleaded me guilty and I was not guilty." And lo and behold, ten years later, "when I am about to be questioned about my license as a real estate broker, to come up to the Police Station and explain something," lo and behold, out of the fifteen millions of people in New York, who does he get to assist him again? He goes right back to the lawyer who put him in jail when he was innocent the first time, who put him in Sing Sing. Gentlemen, that is the kind of testimony that he has been giving you here. "I have been framed, everybody is framing me." But he did his time, and he went right back to the lawyer who he claims pleaded him guilty. And I do not say that disparagingly of Mr. Kesselman, whom I admire and respect, and is as good a lawyer as ever walked the boards. But nobody has got a right to knock everybody down and drag them around. Why, Godby, Godby was a liar. Everybody that was in the office there, including me, was a liar because they said that he admitted that he had taken Jones up to the apartment and introduced him to Katz.

Gentlemen, there is one thing you have got to know, and that is, and I have said this before, but it is true, when criminals go to commit a crime they have not yet become gracious enough to send out engraved calling cards to the Government and say, "Gentlemen of the Government, we want to invite you to a party held at such-and-such a place, where we are going to conspire, agree and confederate to [fol. 628] pass counterfeit money." Oh, no, they do not do that, you know they do not. You know we have got to go around, to ferret out these things. We have got to use devious and divers means to find out where and when these people met. If they told us where they were going to be, we might be able to impanel a jury and bring them over to the point, and then you would hear the defendants holler that the jury framed them. You would have forty lawyers cross-examining you, "Where were you standing? How could you see from where you were?" They would bring a lot of plans in and prove that you couldn't see it from where you were.

Now, you see, it is impossible for me to crawl into his mind and find out why he made this deal for counterfeit money. But you know, at least because Katz told it to you,

and it has the earmarks of truth. I do not take a word that Katz says until I can check back, until I weigh it in the balance, until I kick it around, knock it down, and after it is all kicked around, if it still stands out as the truth, then I believe it. What is there improbable about this? Berger is over in this place with Jones. Now, that mustache business was a pretty good laugh, but it is another sign-off as to how these fellows work.

Mrs. Goldie Goldstein takes the stand. She says she knows Jones, and you can bet your bottom dollar she knew Berger. She stood right where I am now and looked at him and was afraid to go over there, and when I waved my arm everybody started to holler, "Don't point at him." You [fol. 629] know the rules of law. Well, it is the most complicated game in the world. I was examining a woman that I knew knew Berger and could identify him, she was standing right here looking at him, and I couldn't say, "Isn't that the man?" Now, imagine that! But that is the rules of the game, and I have to play within those rules.

But there is a fortunate break for everyone, the Government and honesty and truth and justice always comes out on top, and I am not quoting story-book maxims, because when you add it up in the long run, honest men will always survive and decency comes out on top. Now, she finally got to see Berger, somebody had to almost pick him up and throw him in her lap——

Mr. Wegman: If your Honor please, I have got to object to this. I object to counsel——

The Court: Mr. Singer, nobody picked him up and nobody put him in her lap.

Mr. Singer: I didn't say that.

Mr. Wegman: It is unfair to state that.

Mr. Singer: "Stand up," said I, and when he stood up she said, "Yes," and then tried to explain it, explain the reason why she had failed to identify him before. She said, "Well, it looks like there was something different about him now and then." From that time on everybody was laughing when the statement was made, "Did he have a mus- [fol. 630] tache?" Nonsense! She knew him when she took the stand, and she knew him when she left the stand. You must remember, Jones had been to see her after he had been released. Remember, you are not dealing with a lot of

ignorant school children. Isn't it peculiar that she couldn't identify him when she was over there? Doesn't that sound ridiculous to you? Use your brains, and you can find out what was behind the failure to identify him. They weren't slipping anything over on me. I knew before the case was over she would pick him out or be a sorry lady. And then it struck my mind, and I said to her, "Didn't Jones stay up at your house over night?" And lo and behold, it was like, it was a pretty tough break for her that she finally had to come to court and pick out a man that she had been pretty friendly with. It was a pretty tough break that she had to identify Jones, and if she could have avoided it I believe she would have, and she tried to avoid identifying Berger——

Mr. Wegman: I object to that.

Mr. Singer: (Continuing:) — but her luck didn't hold out.

Mr. Wegman: I object to that.

The Court: Isn't he entitled to argue and give his views of what she tried to do? He is giving his views, he is entitled to make his argument, and he is entitled to give his views. You know he is not to be interrupted all the time. Save your objections until the end, unless they are ma- [fol. 631] terial. He is not stating the evidence, he is stating his opinion. Proceed.

Mr. Singer: Gentlemen, you make your own minds up as to why she couldn't identify him at first, and I won't attempt to encroach at all on your own opinion.

Now, the Government has got a burden to carry. You have seen a little baby with one of these all-day suckers, lolly-pops, how he holds it in his mouth, rolls it around, plays with it, fondles it, to get every last drop of odor, flavor and taste from it. That is the way these lawyers are for the defendants with these three marvelous words, "presumption of innocence." Oh, how they like to roll it around in their mouths! One says it slow, one says it fast, and one makes it sound sonorous, deep, with a base voice. Presumption of innocence. Presumption of innocence. What is that lolly-pop, what is it? It is no more or less than what I am doing to you now. The defendants are presumed in-

nocent, and I am proving them guilty if I can. That is the end of the presumption of innocence.

Now, "reasonable doubt." You see they say that, and that always reminds me of a juggler walking on a ball, rolling it around, to show how skillful he is with the ball and his feet. "Reasonable doubt." Now that is a fine-sounding word. What is a reasonable doubt? It is nothing more or less, Gentlemen, than when you are satisfied that the Government has proven a man guilty, and your conscience is [fol. 632] satisfied on the evidence that they are guilty, you do not have to stay up all night figuring a way out for your verdict. Sufficient it is that the Government has overcome the theory that when they stand on trial they are innocent, and if the evidence proves them guilty, you will convict them. It is not a pretext or excuse that you are going to use to maybe get out of an unpleasant job. That isn't what it means. It doesn't mean any doubt at all that you can figure out. It means, "I got a conscience, I got a job, I am on the jury and I swore an oath to be a good, honest juror. Am I satisfied in my mind that these men committed a crime? If I am I will convict them," and that is your reasonable doubt. Of course, if you didn't want to take the job as jurors you should have refused and said, "I do not have the heart, I do not have the moral fibre or strength to judge my fellow man. I would rather duck the issue and leave it for somebody else." But you took the job, and I am going to hold you strictly accountable to your oath.

I do not ask for any favors. The Government wants no convictions, they do not ask for a single favor from you, and we do not care whether you convict them or not, because it doesn't mean anything to me. It is you that it means something to, because you, right in that jury box, right there sits the Government. You convict them if you want to, you turn them out if you want to. My pay will go on just the same [fol. 633] whether you convict these men or not. None of this "Please" business with me. I never, in trying a case, asked anybody to give the Government anything. Do what your duty is, do your duty when the time comes. Throw aside all this sympathetic nonsense. Send him back to his job, send him back to 1426 Broadway, send him back to those criminals up there, send him back to Katz, or whoever takes Katz' place; send him back to all these other peo-

ple. Nonsense, I say, Gentlemen. Throw that nonsense out. Decide it on the testimony.

Are those bills counterfeit? Everybody says they are. Did these men handle them, and did they know they were counterfeit? Every witness for the Government seems to indicate that is the truth.

Let us look at Jonesey, what a nice-looking fellow he is. He had a little trouble with his wife a couple of years ago. It doesn't mean a thing, it doesn't mean a thing, not the same one he is living with now. Do not charge him on that. Is that the only evidence? Play the game, play the game all the time. What is this fellow Jones? Well, he says, "I am a drunken bum." That is what he says. I am not kidding. He says, "I stopped working and played the horses with my wife's money. I take my wife's money and I walk around the streets so drunk that I do not know what I have got in my pockets, and here I am, send me back, give me another chance." Give him another chance to do what, [fol. 634] says I, and quite rightfully. "Give me another chance to go back home and see if I can clip my wife for ninety dollars more, give me a chance to go home and get drunk some more so that I do not have to work, while my wife is out making a living for me. Give me a chance to go home so that I can go out and associate with some of these ladies again, give me a chance to pass some more counterfeit money to buy clothing." There is one thing that his lawyer said that I have got to answer—everything else didn't make any difference. He raised a good point, and when they make a good point I want to answer it. He said, "It is peculiar, isn't it, and it is very, very odd, that if Jones was trying to pass counterfeit bills, that he did so with people that he knew." That is a very strong argument; you know there is a lot to that. Yes, but you have got to figure it out. If it was a dollar bill, a two dollar bill, or a five dollar bill or ten dollar bill, he would be right. You go out and try to cash hundred dollar bill, just try it, try it, and you will find out what all of us know. In order to get anything over a twenty-dollar bill cashed in the City of New York, and that is because of fellows like these defendants. You have got to go to a bank or got to somebody you know. I guarantee you that the man in the desert without a drop of water to drink is just as bad off as the man

in the City of New York with a hundred dollar bill and the banks closed today. That is why you clip your friends—not [fol. 635] exactly your friends—that is why you try to clip people who kind of half know you and are not sure they know you, like Berger in the clothing store. And you might as well remember that although Jones is trying to picture himself to you as a drug store cowboy, he is a pretty slick little fellow. You notice he gave a number in New York, I think it was the right number but the wrong street, and the fellow in Brooklyn was the right street and the wrong number.

Now, you see, I do not try to arouse your prejudice or bias about the man. I try to say to you men, "I am in the jury room with you," because as I talk to you gentlemen, if I do not convince myself that I have got a genuine, copper-riveted, iron-bound case against these defendants, then I would have to stop and say, "Men, turn them out."

Now, I have tried to anticipate for you any argument that anybody might make for their innocence. Of course, Jones is on a spot. Now, he said one day that he only won one hundred and forty-six bucks. I do not know what kind of a bettor this man is that doesn't work and takes his wife's money to bet on the horses, but conceals it. I have myself at times indulged in that "Sport of the kings," put a little bet on a horse here and there myself. Probably in days gone by others in the court room may have indulged in that form of pleasure. You know you would have to put an awful lot of money up these days to gather yourself $146 [fol. 636] profit. You would have to win a lot of races or make a lot of bets. And as far as I remember how race tracks run—and I have had my experience and so have you, you do not have to throw your experience out in the alley, you know, you have got it right here with you and you take it along with you in the jury room—my experience is that the first race at most tracks in the country is at 1:30 about this time of year. And I am trying to think as I talk to you now of a single track in the country—and I may be mistaken because lately, for very obvious reasons, the depression being one of them, I have not been able to indulge in that sport any more—I do not ever remember making a bet on a race that ran before 1:30. Now, some of you gentlemen may be more experienced. You will remember he made a few bets, and all of a sudden he found himself leav-

ing New York before two o'clock, with a hundred and forty-six bucks, and now later he said two hundred and sixteen or two hundred and seventeen, two hundred and eleven, make it whatever you feel like. "Come on, come on home with me," say I. Let me come right in the jury room and you answer it for me, that is all I say, except the fact that he bought counterfeit money with the ninety bucks that he stole from his wife and maybe ten bucks he had in his pocket, which maybe he stole from his wife before. He had to make good. Now, how is the easiest way to make good his gambling [fol. 637] losses in the least possible time? Oh, you have his good pal Berger, who was not only taking care of him in a business way, but also was taking care of him up at this apartment where there were some ladies of pleasure. And he thought that this was an opportunity to turn to good account all of this good fortune that his pal Berger had thrown upon him, and grab himself an honest dollar by buying some counterfeit money and sticking somebody else with it. Now, figure it out for yourself. Isn't it logical and dosn't it fit in as closely as you can dovetail it?

Now, Katz is a liar. Well, they brand him a liar. But Katz said he sold him four bills for a hundred dollars on a certain day, and Jonesey gets on the stand and admits that at that time he took $90 from his wife. That is just another sign-post, another arrow, which finally directs you to the real truth of the matter.

Let us get away from Jones, because his testimony on the witness stand was such as to brand him as a man, to say the least, who was careless with the truth. You know he finally got himself into such a position with this money, and I am trying to be fair with him, where he finally had to admit that it was impossible to have won the money he said he did, leave the money where he said he did, and still have the balace he said he did, so he winds up by taking the easiest course, that he was dizzy drunk and didn't know what was happening to him, that it came down on him like a cloud-[fol. 638] burst out of the sky, and when he woke up in a blaze of glory, did not know how much money he had, except he knew where to go for his suit of clothes, he knew how to get to Woodside, he knew how to come back to New York to the hockey game, he knew how to get to Goldie Goldstein's apartment, he knew how to talk business, and he

knew everything except what he finally found out it was better to say he didn't. Now, that is the man that they ask you to believe. It is a regular moving picture, but in the flesh. And there are the bills that he passed.

So much for Jonesey. And we pass on our way uptown. And oh, I might say in passing, the one thing I may have overlooked about Jonesey is, Berger's counsel was trying to ask the witnesses questions this morning, and I am going to answer them now. He wanted Katz to tell him whether, if a man tried to hide the identity of a person, whether he wouldn't give the man's wrong first name and describe him differently than he really looked. Now, Gentlemen, it is well known, and you can take a page out of your own experience, that if a man's name is Louis Brown, if he ever uses another name, unless he is very, very clever, it will usually be a name beginning with the initials L. B., and that is known. Now imagine yourselves, Jonesey being examined by Kett, and kind of skeptical in his mind whether he can tell a story and get away with it. He had the picture in his mind of the man that gave him the bills, that is the psy- [fol. 639] chological reaction. Now, he didn't want to give the man away. But, drunk as he tried to claim he was, he still fell into the old error of giving the right first name, and then describing the man almost to a T, and when he got all through, that is what he looked like. And now you look Berger over and see if that description doesn't fit him. "Oh," they say, "but they described him as a Greek or an Italian." Well, what would I do if I were identifying a man like that, after I finally got down to the point where I was afraid I had identified the man too closely, I might say, "He looks like a Greek or an Italian." There is nothing about that that doesn't sound true and reasonable.

Now, the funny part of the whole thing is that Jonesey proves our case. Jonesey is the man that says that Katz really had counterfeit money and sold it to him or gave it to him. Now, they are hollering that Katz was a liar, Berger and Rice and Jones, and finally they say it so much that you get to the point where you might say, "Did Katz ever have a counterfeit bill?" but Jonesey finally takes the stand and says, "Oh, wait a minute, I will tell you, it was Berger, it was Katz that gave it to me." But he is wrong, the combination is the old Tinkers to Evers to Chance, the combination is Katz to Berger, Berger to Jones, and

Jones to the sucker, the guy that got clipped with the bill and did not get paid for it, or if he got paid, he was lucky, because Jones could manage to have his wife go out and [fol. 640] work and dig up some coin to straighten it out. The old combination left out the sucker, the man that had to stay and take it, the man stuck with the counterfeit bills.

Let us take a look at our friend Rice here. He sits there in the back of all the others; at first he was sitting up in front, but now he has taken for himself a seat in the background, part of the psychological idea to remove himself from your direct ken and observation, hoping in the excitement we may overlook him. But, oh, no, Gentlemen, we are not overlooking him and he knows that I won't. But if he could only sit in the back seat at he sat in the back of that room with some of these partitions around him that these people claim they could look through, you might not be able to see him, but there he sits, there he sits. The facts of this case are strong enough so that he cannot break through.

Now, with Rice you again find a Dr. Jekyl and Mr. Hyde. You again find on one hand the respectable, honest, high-class business man, the man who says that "Had you come into my office at any other time of the day or the week you would have found socially prominent people of real worth and value. But, oh, Gentlemen, I am so sorry, when you came there at this time you happened to walk in on a meeting of the old Burglars Association of America." You know that is a problem, that is a problem, it is a problem. How can a man do it, how can a man on the one hand be [fol. 641] ostensibly leading a good, clean honest life? How can he by walking the old chalk line every single day, at the same time be engaged in another business? Well, now, Berger is one man that could show you the way. Jones wasn't smooth enough, it was his whole life. Well, Rice is the master of them all. A hundred witnesses could probably be called here and every one of them could say, "Rice, the gentleman; Rice, the engraver; Rice, the emblem of honesty; Rice, the man that you can rely upon as truthful, as it is written on the tablets," and not one of those men could say, "Rice, the associate of Katz; Rice, the friend of Lee; Rice, the dealer in diamonds and jewelry, that he had no interest of the origin."

My old friend Morris here, with that "Dapper Dipper Collins," and all that business, that is just the old oil. I will get these fellows into thinking it is just another name, "Fats, Blue, Green, Pink." You have heard that all before. The fact of the matter is, and Rice had to admit it, although he said he learned it after his arrest, that this Dapper Don Collins—well, I am sure his name strikes a responsive chord in your mind—was that world-famous international thief, a genuine blue-white diamond among the others. Now, they say it is a coincidence, and coincidences are strange, but when you run into about a dozen coincidences the case sounds sour. Now, if Rice was the honorable man that he says he was, and Katz was this thief that he didn't want to talk to—oh, he never denied it on the witness stand, he was never asked whether he met Katz [fol. 642] in the restaurant, but Agent Godby swore that he heard it, that he said to Katz, "Katz, don't you come around any more and don't call me, things are getting hot, you had better get out of town."

Mr. Kamber: Wait a minute——

Mr. Singer: That is in the evidence.

Mr. Kamber: Wait a minute, stop. I object to any such statement made by the District Attorney. There is nothing in the evidence about getting out of town and getting too hot; it isn't fair.

Mr. Singer: I say it is right in the evidence.

Mr. Kamber: Then let the jury recall it.

The Court: It is the jury's recollection, not yours or mine, that is to govern.

Mr. Kamber: I want your Honor to direct the jury that they should not take Mr. Singer's word as to what the evidence is; it is their recollection and not Mr. Singer's.

The Court: Yes.

Mr. Kamber: And he should not make statements like "It is getting hot," and all that bunk, yes, bunk, which you know isn't true.

The Court: Wait a minute. I would have instructed them in the end and I will instruct them now. You do not need to take the word of any of counsel, you do not need [fol. 643] to take the word of the Court as to what the evidence is. It is your recollection that is to govern you and not that of counsel or the Court. And if you want any

evidence read to you at any time in your deliberations, you can inform the Court and it will be read.

Mr. Singer: And, gentlemen, this——

The Court: It is your own recollection of the testimony that is to govern.

Mr. Singer: Do you remember Agent Godby on the witness stand, the incident in Roth's Restaurant, Mr. Kamber cross-examining whether he could hear eight feet away, and Godby testified, I think I have his words verbatim, that Rice said to Katz, "Things are getting hot, don't call me on the telephone any more. You had better get out of town for about a week or more." And then Katz saying, "I think I will go down to Philadelphia." Now, it is in the sworn testimony.

Now I wonder and I again say that whether Rice talked that way to his high-class, genteel, social-like clients, I wonder whether he said over in the restaurant to any of his high-class clients, that man from Abercrombie-Fitch, or any of the rest of them, "You had better get out of town, things are getting hot, blow." Oh, no, no, that is the language of the underworld, and that is the sign-off, that is the signature, that is the unerring sign-post that Rice wasn't what he appeared to be. There was corroboration of Katz' story. There you have Katz and Rice tied up [fol. 644] in something that was hot, something that required Rice to say, "Get out of here, blow, get out of town; things are getting hot. Don't come around to the office; if you want me, have somebody else call me."

Mr. Kamber: I again submit——

Mr. Singer: I say that is in the evidence, and if you do not think so, have it read.

Mr. Kamber: May I submit to your Honor, may I say something?

The Court: Yes, but you should wait——

Mr. Kamber: Mr. Singer is not quoting the testimony correctly.

The Court: All right. I instructed the jury that it is the jury's recollection. If Mr. Singer misquotes the testimony, they will know it, but these interruptions should not come during the summation, unless there is real reason for it.

Mr. Singer: If I make a mistake, gentlemen, come right back and have the stenographer read the testimony, have

him read it to you. It is there in black and white. It is also engraved, the testimony itself is engraved on your hearts and on your memories, just the same way that these bills were made from an engraved plate. All the bills, mind you, came from the same plate, that is, all the hundred dollar counterfeits, all of them made from the same plate.

And we finally find Mr. Rice, the outstanding, stalwart [fol. 645] gentleman, the associate of social lions and prominent people, passing one of these bills, you say. Now, a liar and a thief did not corroborate that, unless my friend wants to add to all of the names that he called Katz the name of Mr. Nat Lewis and the lady that worked for him, Miss Napp. I never heard Mr. Kamber, I never heard the defendant, or anyone, say to you that those people were lying. But come on, let us go, let us take a look at that haberdashery store and see what happened. "Now, it is the night before Christmas, and I want to have a party, and I want to buy some presents." And I say, "Come on, boys, I am going to buy you a couple of presents. Let us do down to Nat Lewis' store." I go in the store and I buy something. I am flush, it is Christmas, and I give him a hundred dollar bill, take my package, and get my change, and I go out. Now, three days later the fellow in the haberdashery store calls me up in the office on the 'phone and says, "I want to see you." Well, I go down and I say, "What do you want to see me for?" "Well, look here, boy, it looks like a week ago you stuck me with a counterfeit hundred dollar bill." I say, "What do you mean, wait a minute, don't be giving me any of that hundred dollar bill business. How many hundred dollar bills did you get that day? Why do you blame it on me?" And I would say to him, "Now, a hundred dollars, that is a lot of money. If I gave you a hundred dollar bill, I know who gave it to me. Now, come along Mr. Storeman, and I am going over to the man that gave me the bill, and if it is [fol. 646] the bill that he gave me, I will make it good, but I won't——"

Mr. Kamber: I do not want to interrupt, but——

Mr. Singer: And this is what happened——

Mr. Kamber: I do not think——

The Court: Is he not entitled to make any argument?

Mr. Kamber: But he isn't entitled to say what the testimony is.

The Court: He isn't stating any testimony, and he didn't say so; he said that is what he would do.

Mr. Singer: Now, gentlemen, wouldn't you do that? Wouldn't you say to the man, "How do you know that is my hundred dollar bill?" Wouldn't you say that to the man, "Now, wait a minute, don't go so fast. A hundred dollar bill is a big bill." He wasn't in the banking business, Rice wasn't, he didn't do business in a place where he was taking in hundreds of hundred dollar bills over the counter. If he got a hundred dollar bill, he knew who gave it to him. That is a pretty big job for an engraver. You could probably get a lot of engraving done for a hundred bucks these days, you could probably get more engraving done for that amount of money than you could carry on your back, and you would very easily remember the man who gave it to you. But he didn't, this socially prominent lion, [fol. 647] he didn't do that, he was like a figure of wood. He said, "Let us have the bill, and I have got here fifty bucks in my pocket, you can have that now and I will make the rest good later. Let us have the bill." Of course, if he had this marvelous business and he was this prominent man that he claims to be, who was so busy he couldn't stop to make hundred dollar counterfeit notes or possess them, he would have immediately sent back the whole hundred dollars to Nat Lewis, and wouldn't have started paying it by instalments, where he only paid $75 and still owes $25. He didn't think that that would come out, but it is all before you; you see it all now.

And lo and behold, gentlemen, we investigate this social lion, and what do we find? We find the man that hobnobs with thieves and criminals and ex-convicts that his own lawyer hollers about.

Now, has the Government, has the Government for an instant relied on Katz' testimony at all? No, we haven't. You heard Katz testify, and you listened to Godby testify under oath about him saying, "Bring five bottles," or "bring some large bottles of Ginger Ale." Well, now, you tell me why a man should bring Ginger Ale to Roth's Restaurant. It is like bringing a ham sandwich to a banquet, ridiculous! Certainly it had a meaning.

Now, gentlemen, let me revert to an old saying, "Birds of a feather flock together." We had a lawyer working [fol. 648] for the Government in this building, and he para-

phrased the situation here beautifully. It was his habit to say, and I will take his words now, "If you want a beautiful rose you would go to a garden where the roses grow; if you wanted nice, shiny pebbles, you would go down to the beach where the rippling waves wash the pebbles and leave them clean and unsullied, but if you want dirt, filth, the muck of ex-convicts, you would go down to the underworld." You can't answer that and square it with your conscience.

Gentlemen, I am sorry for every person that comes within the net of the law. I am not sorry because of the fact that he was caught, oh, no, because it is our job to try to catch such criminals. I am sorry for him in that he ever went wrong to begin with, and I say to him, as I said to this boy on the witness stand, this boy Phil Aaron, I said, "Son, now you are clean take my advice and go home and don't go there again." Now, that is being sorry for a man with a real interest in his welfare, not being sorry for him because he has committed a crime and saying "Send him out again," in the hope that he may not do it again. Oh, no, gentlemen, when boys, mere amateur boys, commit crimes, the law has a place to take them. The law says that a boy up to the age of a certain number of years cannot commit a crime, whatever he does is a juvenile delinquency, and he can't go anywhere except to certain institutions, and [fol. 649] even in later life those youthful indiscretions are not crimes and cannot even be asked about. But the law says when you step across that dividing line between boyhood days and the full growth of manhood, and especially when you have stepped so far across the line that almost every defendant is twice the age of a boy, that is pretty bad. The old arguments have kind of fallen flat when they try to give you the old sympathy game and say, "Send him back home."

Gentlemen, the Government can answer every argument of fact or principle or ethics. The one unanswerable argument is sympathy, because, Gentlemen, that is a serpent, a snake created for the purpose of attempting to have that steal into your heart and conscience and destroy reason; and that is its only purpose, its sole purpose, because whether you are sorry for him or not, that doesn't help you to decide, in the light of clear and cold logic and reason, whether he passed these bills or whether he didn't.

And the reason they try to add sympathy to their arguments (and you may judge for yourselves that their arguments are falling flat), they are now relying upon striking some humane or sympathetic chord which will so distort your reasoning power as to make you temporarily blinded. But, gentlemen, it is my job and your duty to hew to the line.

Now, there is a place in our system for sympathy, because humane people appreciate that people should [fol. 650] have sympathy and understanding, and the law has well provided for it like it has provided for everything else; right there up on the bench sits the learned gentleman in whose hand and in whose heart and in whose mind the law has entrusted the burden of dealing with sympathy pleas and sympathetic pleas. Those pleas should be addressed to the Court, and they are not for you or for me. Those gentlemen appreciate if they could appeal to your sympathies and they could appeal to mine, and if they could appeal to my sympathies, Gentlemen, no criminal might ever get into this court to be indicted or to be tried. Sympathy comes after reason has determined the issue.

Now, I think,—I do not know what this box is here for. I have tried to find out why they brought it here. It has annoyed me for two days. Why in the world did they bring it here? What is it here for? What is this plan here for? Why was it produced? Why bring it around—(knocking box on floor)——

Mr. Kamber: I object to this business, this knocking down and making a football out of an exhibit.

The Court: Do not spoil the exhibit. Go ahead.

Mr. Singer: What is it here for?

Mr. Kamber: Put it up on the table.

Mr. Singer: All right, you put it up on the table. The [fol. 651] Court very properly said, "It is full of emptiness," and it is full of emptiness as far as this case is concerne-. Gentlemen, this acting business is all right, and it might be successful if the Government representative sat here and said, "Oh, well, boys, will you go out and convict the fellows?" and then sat down and that was all there was to it. Could you imagine this town and country running loose with a bunch of Rices, a bunch of Joneses a bunch of Bergers, and such people, passing all kinds of

counterfeit money, indulging in all kinds of business, and the Government just standing idly by with the crowd and letting them get away with it? Nonsense! That is what I am being paid for. And I say this, Gentlemen, I never make the first move. The moment the other man steps out of his character I try to step along with him. You can't condemn me if I try to give the Government an honest day's work, if I try to give the Government the benefit of a little extra endeavor on my part to see if possible that justice may prevail over tricks and artifices. I have tried to answer every word. Why did they bring the box in here? I want to know why they brought it in here, if he says the counterfeit money was in the box, and because it was in the safe the man who was supposed to be in the office couldn't see Katz take it, or Rice give it to Katz. That is a question. Maybe the box served some purpose. The fact of the matter is, it may well be that this very box you see before you was at one time the place where these bills were, and where they reposed. As a matter of fact, they look quite natural in there. The only trouble is there may not [fol. 652] be as many there now as *there now* as there may have been before. Maybe that is the story that the box brings to you. There is the plan of the office. I do not know where they were sitting or where they were standing or what they want us to understand from that plan. Any body can draw a plan, anybody can do that, and bring it into court. What is it here for? The argument is that if a man sits here he can see what is going on over there. That is what he says. He has to look down a straight wall, look past the corner and look past the cabinet, and then he says he can see what a man is doing in that room there. What does he see there? Maybe he sees a picture of the man in the room. I do not know, I do not care. They talk about atmosphere, and then they go ahead and bring in a tin box and draw a lot of plans and bring them in here.

Sure he has an office, there is a couch, a desk, chairs and everything. Did you hear the one man who could have cleaned up this situation entirely? The defendant called a lot of witnesses. Why didn't he call his friend Lee? He was discharged, he was out of the case. Lee was with him in Roth's Restaurant, Lee was with him on the second trip to Roth's Restaurant, and Lee was the man that introduced Katz to him. Why didn't he call him? Was it because Lee

had had his brush with the law, and he was afraid to add another criminal to the party——

Mr. Kamber: I object to that.

[fol. 653] Mr. Singer: He can object to all he pleases. He didn't call him.

Mr. Kamber: All right. Are you through? I won't object.

Mr. Singer: That is the point.

Mr. Kamber: Go ahead, get this stuff over if it does you any good.

Mr. Singer: The fact of the matter is, nothing does me any good. I hope what I say does the Government and you good. I hope it helps you all to arrive at a fair, sane, God-fearing judg- mention the one issue in the case, the counterfeit bills now reposing in the box.

Gentlemen, it has been a long, tiresome day. You are going home, and I hope, although Mr. Kamber says he didn't sleep last night, he has been pulling that one in every trial for the last five years, and I hope you gentlemen——

Mr. Kamber: That isn't so and you know it.

Mr. Singer: I hope that you gentlemen——

Mr. Kamber: It isn't so.

Mr. Singer: It isn't so and I know it? It is just ridiculous. He has told you that this is the first case in thirty years that he didn't sleep. Last year it was the first case in twenty-nine years. The year before it was the first case in twenty-eight years; and so on. It becomes a stock phrase. Gentlemen, in all seriousness, I want you to go [fol. 654] home now, because from now on you will be through with the arguments of counsel, and you will only hear a dispassionate, absolutely clear, shall we say cold-blooded, exposition of the law tomorrow morning. When his Honor charges you, he may do so in such fashion as will indisputably remove from your mind any idea that he has any opinion as to the guilt or innocence of these defendants. So that from now on all that you have to hear is law, which, at its best, is a musty, dry, dead old thing, except as it is given life by jurors after they have heard the evidence and decided accordingly.

Now, when you go home tonight I do not want you to remove this case from your minds entirely. I do not ask you to forget about it and come back tomorrow morning. I say to you gentlemen, "Go home tonight and think and dwell deeply on a most important task that is going to await you tomorrow." Tomorrow you are going to be called upon to exercise the highest function that an American citizen ever is given the opportunity to perform, the right to to try his own fellow citizen and sit in judgment upon his acts. Now, it is serious, because, Gentlemen, my work finishes tonight; when I finish this address I am through, and your work begins. Now, sift the evidence, give the defendants every break in the world that you can figure out, but don't forget, of course, to give old Uncle Sam and our Government his proportionate share of the breaks. Figure it out, reason it out yourself, because you can't discuss it with anybody else tonight or even among yourselves. Reason it with yourself. Come back tomorrow morning imbued with the idea that, "I will go in that [fol. 655] jury room, and I am going to listen to argument, and I am going to be open to reason, I am going to stand for what I believe is so, and I am going to show the world at large that I can render a verdict on the evidence and the evidence alone. That a lot of witnesses who testify about how an office is laid out, about a box that is in a safe, won't keep me from doing my duty, that a good front, a snappy suit and a fancy office won't fool me; that I will look behind the office, I will go in that office in my mind and try to hear what was being said when Dapper Don Collins, the international thief, and Fat, the safe burglar, when Katz, the thief and ex-convict, when Lee, the other ex-convict, and our friend, Rice, were in there talking together."

I want you to transport your mind into that office and listen carefully, and see whether they were discussing the problem of Soveit Russia or whether they were talking about counterfeit bills.

Now you have heard it all. You do your duty, every man and citizen, and convict..

The Court: Gentlemen, do not allow anybody to talk to you about this case, no one at all; do not allow anybody to approach you or talk to you about it at all; do not dis-

cuss it between yourselves; do not form any opinion until you receive my charge tomorrow morning.

We will adjourn now until tomorrow at ten-thirty.

Adjourned to March 23, 1934, at 10:30 A. M.

[fol. 656] CHARGE TO THE JURY

UNITED STATES

v.

JACK RICE et al.

Brooklyn, N. Y., March 23, 1934.

Met pursuant to adjournment at 10:30 a. M.; present as before.

The Court: The stenographer will please make a note that no requests to charge were submitted to the Court in accordance with the rules.

Gentlemen of the Jury, these three defendants are presented before you upon an indictment which consists of nine counts. All of these counts are not to be considered with reference to all of the defendants. The defendant Rice is presented upon all of the counts. The defendants Berger and Jones are presented as to three counts, 7, 8 and 9.

This indictment in the first count, and this will relate only to the defendant Rice, in substance charges that he did unlawfully, wilfully, knowingly, fraudulently and feloniously utter, publish and pass upon and attempt to utter, publish and pass upon one Vitola Piccione, a falsely made, forged and counterfeited obligation of the United States, to wit: A circulating note of the denomination of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and similitude of a true and genuine obligation of the United States, and then it describes the note in letters and figures, and that is in evidence here before you.

[fol. 657] The second count in substance charges the defendant Rice with unlawfully, wilfully, knowingly, fraudulently and feloniously uttering, publishing and passing upon and attempting to utter, publish and pass upon one Vitola Piccione, a falsely made, forged and counterfeited obligation of the United States, to wit: A circulating note of the denomination of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and similtude of a true and genuine obligation of the United States, to wit: A $20.00 Federal Reserve note issued by the Federal Reserve Bank of Dallas, Texas, and which said falsely made, forged and counterfeited obligation of the United States is described in letters and figures and is in evidence here before you.

The third count of the indictment charges the defendant Rice that he did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously utter, publish and pass upon and attempt to utter, publish and pass upon one Vitola Piccione, a falsely made, forged and counterfeited obligation of the United States, to wit: A circulating note of the denominaton of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and similitude of a true and genuine obligation [fol. 658] of the United States, to wit: A $20.00 Federal Reserve note issued by the Federal Reserve Bank of Dallas, Texas, and then they set forth in letters and figures the note which is here in evidence.

The fourth count, and this is against the defendant Rice, only for this present proceeding, charges that he did unlawfully, wilfully, knowingly, fraudulently and feloniously utter, publish and pass upon and attempt to utter, publish and pass upon one Vitola Piccione, a falsely made, forged and counterfeited obligation of the United States, to wit: A circulating note of the denomination of $20.00 purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the reesmblance and similitude of a true and genuine obligation of the United States, to wit: A $20.00 Federal

Reserve note issued by the Federal Reserve Bank of Dallas, Texas, and then it sets forth in letters and figures the note, and that note is here in evidence and presented before you.

The fifth count is against Rice only at this time, and charges that he did unlawfully, knowingly, fraudulently and feloniously keep in his possession and conceal with intent to pass, publish, utter and sell the same, a certain falsely made, forged and counterfeited obligation of the United States, to wit: A circulating note of the denomination of $20.00, purporting to have been issued by the Federal Re- [fol. 659] serve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of the United States, the said circulating note being in the resemblance and similitude of a true and genuine obligation of the United States, to wit: A Federal Reserve note of the denomination of $20.00, issued by the said Federal Reserve Bank of Dallas, Texas, and then they describe that note in letters and figures, and that note is in evidence here before you.

Then the sixth count, which relates only to the defendant Rice, charges that he did unlawfully, knowingly, fraudulently and feloniously keep in his possession and conceal with intent to pass, publish, utter and sell the same, a certain falsely made, forged and counterfeited obligation of the United States, to wit: A circulating note of the denomination of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association and thereafter authorized and acting under the laws of the United States, the said circulating note being in the resemblance and similitude of a true and genuine obligation of the United States, to wit: A Federal Reserve note of the denomination of $20.00, issued by the said Federal Reserve Bank of Dallas, Texas, and then that is described in letters and figures and that note has been offered in evidence and is here before you.

[fol. 660] Now we come to the seventh count, and that count includes all three defendants, Rice, Jones and Berger, as they sit before you. You will understand that I have given you the charges in substance; I have not given them to you in full as they are alleged, as it is not necessary to repeat them to you at this time in full. I have given you

these charges in substance as they are alleged in the indictment.

The seventh count is directed against all three of the defendants and charges them that they did then and there unlawfully, wilfully, knowingly, fraudulently and feloniously utter, publish and pass upon and attempt to utter, publish and pass upon, one Samuel Berger, a falsely made, forged and counterfeited obligation of the United States, to wit: A circulating note of the denomination of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and similitude of a true and genuine obligation of the United States, to wit: A one hundred dollar Federal Reserve note issued by the Federal Reserve Bank of Chicago, Illinois, and then that note is described in letters and figures and is in evidence here before upon. That is the one that was passed upon Berger, the tailor, as you remember, over in Long Island.

Then the eighth count in substance charges, and this relates to all three defendants, that they did unlawfully, [fol. 661] knowingly, fraudulently and feloniously keep in their possession and conceal with intent to pass, publish, utter and sell the same, a certain falsely made, forged and counterfeited obligation of the United States, to wit: A circulating note of the denomination of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, which is a banking association then and thereafter authorized and acting under the laws of the United States, the said circulating note being in the resemblance and similitude of a true and genuine obligation of the United States, to wit: A Federal Reserve note of the denomination of $100.00, issued by the said Federal Reserve Bank of Chicago, Illinois, and which said falsely made, forged and counterfeited obligation of the United States was in the letters and figures thereafter mentioned, and that is described. And this is the same note that is mentioned in the seventh count before as having been uttered or attempted to utter, and so forth. They charge in the seventh count the passing or attempting to pass and utter, and they charge in the eighth count the possession of the same note.

Now we come to the ninth count of the indictment, which is directed against all three of these defendants, and it is

different from the other counts. The first eight counts are what are called substantive crimes, that is, they charge a crime in and of itself, either in the possession of the note or in the passing or the attempting to utter and pass the [fol. 662] note. You may hear that word from me at other times in my charge, that is, a substantive crime, and you will understand what that means. That means a crime in and of itself with reference to the one charged having possession of or attempting to utter and pass the note.

The ninth count is not such a count. The ninth count is a charge of conspiracy; that is not a substantive crime charged to the particular person in and of itself, but it has to do with something different and I will charge you as to that later, but I want you to keep the distinction in your minds so that you will understand me.

This count in substantive charges, and I will read this count to you because it is much better than to try to paraphrase it. Speaking of these defendants with other people, some of whom we have seen, as you know, relieved by the charges being dismissed against them, and including, of course, among others, this man Katz, who was a witness here—this count charges as to these defendants, together with Katz and others, and you do not need to consider the others in this case, "Hereafter called the defendants, beginning on or about the 15th day of November, 1933, and continuing up to and including the date of the filing of this indictment, in the Borough of Brooklyn, County of Kings, City, State and Eastern District of New York, and within [fol. 663] the jurisdiction of this court, and in the Borough of Manhattan, City of New York, Southern District of New York, and divers other places to the Grand Jurors unknown, did unlawfully, wilfully and corruptly combine, conspire, confederate and agree together and with divers other persons whose names are to the Grand Jurors unknown, to commit an offense against the United States, to wit: To violate Title 18, United States Code, Sections 263 and 265, in the following manner, that is to say: The above named defendants did knowingly and wilfully agree together, with intent to defraud, to possess and keep in their possession, and conceal, with intent to utter, publish and pass the same, and to utter, publish and pass and attempt to utter, publish and pass, falsely made, forged and counterfeited obligations of the United States, to wit: Circulating notes of the

denomination of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and similitude of true and genuine obligations of the United States, to wit: $20.00 Federal Reserve notes issued by the Federal Reserve Bank of Dallas, Texas; and circulating notes of the denomination of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, which is a banking association then and thereafter [fol. 664] authorized and acting under the laws of the United States, the said circulating notes being in the resemblance and similitude of true and genuine obligations of the United States, to wit: Federal Reserve notes of the denomination of $100.00, issued by the Federal Reserve Bank of Chicago, Illinois; the said defendants then and there well knowing that the said circulating notes above referred to were falsely made, forged and counterfeited, and intending then and thereby to defraud divers persons to the Grand Jurors unknown; against the peace and dignity of the United States and contrary to the form of statute in such case made and provided. (Title 18, United States Code, Section 88.)

"That in pursuance of said unlawful conspiracy and for the purpose of effecting the object of same the above named defendants did commit the following overt acts."

I would like to have you retain in your memory those words "overt acts," because I will have something to say as to that later on. It has a very important bearing, and I would like to have you remember overt acts, and when I speak of that you will know I relate back to these allegations in the indictment with reference thereto.

"Overt Acts

"1. In pursuance of said unlawful conspiracy and for the purpose of effecting the object of same, on or about the 4th day of January, 1934, in the Eastern District of New [fol. 665] York, and within the jurisdiction of this court, the above named defendants," and I will name here only these defendants that are before you, together with Katz, who is not on trial but is alleged to be a party to this conspiracy, "did unlawfully pass upon one Samuel Berger a

falsely made, forged and counterfeited obligation of the United States, to wit: A circulating note of the denomination of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and similitude of a true and genuine obligation of the United States, to wit: A $100.00 Federal Reserve note issued by the Federal Reserve Bank of Chicago, Illinois.

"2. In pursuance of said unlawful conspiracy and for the purpose of effecting the object of same, on or about the 4th day of December, 1933, in the Eastern District of New York and within the jurisdiction of this court, the above named defendants," now I refer to these defendants and also to the witness Katz, "did unlawfully pass upon one Vitola Piccione certain falsely made, forged and counterfeited obligations of the United States, to wit: Sixteen (16) circulating notes of the denomination of $20.00, purporting to have been issued by the Federal Reserve Bank of Dallas, Texas, which is a banking association then and thereafter authorized and acting under the laws of the United [fol. 666] States, the said circulating notes being in the resemblance and similitude of true and genuine obligations of the United States, to wit: Federal Reserve notes of the denomination of $20.00, issued by the said Federal Reserve Bank of Dallas, Texas.

"3. In pursuance of said unlawful conspiracy and for the purpose of effecting the object of same, on or about the 31st day of December, 1933, in the Southern District of New York, the above named defendants," and I will include Katz with those here on trial, "did unlawfully pass upon one Bernard K. Zimmerman, six (6) falsely made, forged and counterfeited obligations of the United States, to wit: Six circulating notes of the denominations of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and similitude of true and genuine obligations of the United States, to wit: $100.00 Federal Reserve notes issued by the Federal Reserve Bank of Chicago, Illinois.

"4. In pursuance of said unlawful conspiracy and for the purpose of effecting the object of same, on or about the 5th day of January, 1934, in the Southern District of New York, the above named defendants," and I include these defendants and Katz, who is not now before you, "did unlawfully [fol. 667] pass upon one Goldie Goldstein, a falsely made, forged and counterfeited obligation of the United States, to wit: A circulating note of the denomination of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and similitude of a true and genuine obligation of the United States, to wit: A $100.00 Federal Reserve note issued by the Federal Reserve Bank of Chcago, Illinois.

"5. In pursuance of said unlawful conspiracy and for the purpose of effecting the object of same, on or about the 24th day of December, 1933, in the Southern District of New York, the above named defendants," including these defendants and Katz, who is not now on trial before you, "did unlawfully pass upon one Nat Lewis, a falsely made, forged and counterfeited obligation of the United States, to wit: A circulating note of the denomination of $100.00, purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, which is a banking association then and thereafter authorized and acting under the laws of the United States, in the resemblance and similitude of a true and genuine obligation of the United States, to wit: A $100.00 Federal Reserve note issued by the Federal Reserve Bank of Chicago, Illinois."

The indictment is but a charge; it is a method whereby the defendants are placed upon trial. Guilt cannot be found [fol. 668] simply because an indictment is presented. Guilt, if found, must be found as a result of proof. Under the wise and humane provisions of our law all the defendants are presumed to be innocent until you by your verdict shall determine whether that presumption has been rebutted or sustained. It is the duty of the Government to prove the guilt of the defendants, and each of them, as to each element necessary to constitute each distinct crime that is alleged in these counts, beyond a reasonable doubt. A reasonable doubt is exactly what the name implies, not some

mere whim or preconceived prejudice, not a method of escaping an unpleasant duty, but a fair doubt on the evidence, a doubt for which you can give a reason satisfactory to your conscience.

We have these defendants here. All these counts are not to be considered as against all of them. I will take up each of them with reference to the charges made against them.

If I refer to some evidence and do not refer to other evidence it does not mean that the evidence that I refer to is more important than the other, nor does it mean that that alone is to be considered and that you should fail to consider the other; not at all. All of the evidence is of importance, all of it must be considered by you. Such evidence, if any, as I may refer to, I will refer to in order to make clear to you my rulings on the law.

[fol. 669] Let us start out with this proposition, that whatever counsel may have said to you was the evidence given by any witness, whatever I may say to you was the evidence given by any witness, is simply our recollection. That does not control you. It is your recollection of the evidence which has been given which is controlling. If there be any doubt in your mind as to the evidence of any witness on any point, you may have that read to you by the stenographer, if you shall require it.

Gentlemen, before we go into a further discussion there was in the summation yesterday a little dispute between some of the counsel as to their personal relations. Let me say to you that has no place in this trial. Counsel are not on trial, and whether they like each other or dislike each other is a matter of absolutely no importance. We are not here determining any differences that they may have between each other. The people on trial here are the three defendants, and you will d-cide the case on the evidence that has been given here, not on any differences that there may be between counsel.

You are the sole judges of the facts, and you need not try to find out whether I have any opinion on the facts or not. If you think I have an opinion and you think you know what it is, disregard it. I am not responsible for the determination of the facts; that rests on your conscience under your oath. You are to render a verdict on the evidence as given here and on my instructions on the law.

[fol. 670] There is no place here for sympathy, there is

no place for bias. Let us get that straight. One of the witnesses called as a character witness made a statement with reference to membership in a certain organization. That must play no part in your decision; that is not here before you. Men have a right to belong to any organization that they want to, but their membership or lack of membership in any organization of any character can legitimately play no part in the decision of questions of fact in the court.

What is the charge against Jones? Did Jones pass the two $100.00 bills? While I am on that subject let me say that there is no count of a substantive crime against Jones for the passing of the $100.00 on the Goldstein women in New York, because there couldn't be any here. New York is in the Southern District, Manhattan is in the Southern District, and we could not make any charge for the pas-age of that money as a substantive crime in this district. He is not charged here with the passing of that $100.00 on her, but he is charged with passing a $100.00 note on a man named Berger, the tailor and that man was in the district. So there is a charge of a substantive crime against Jones for the passing of that $100.00 note on Berger, and for the possession of that $100.00 note in this district. Then there is a further charge of conspiracy. I am going to deal first with the substantive crimes, and then I will deal with the conspiracy as to all of them.

[fol. 671] Did Jones pass this $100.00 note on Berger? Is there any denial of it? When he passed it did he know it was counterfeit, or did he, acting as a reasonably prudent person should have acted, have reason to know that it was a counterfeit? A man dealing with money cannot put a bandage over his eyes and say, "I did not know." All that is required of a man when he receives money in what is apparently a legitimate way is that he exercise the care that a reasonably prudent person would exercise with reference to it.

Did he know it was counterfeit? Did he have reasonable grounds to believe it was a counterfeit note when he passed it on Berger? If he did, he committed a crime, the crime charged. If he didn't, if he honestly believed it was good money, if he did what any reasonably prudent person would have done, then, of course, he wouldn't be guilty of a crime. There has been some talk here of evidence that

his freedom from crime is shown by the fact that he passed the money on a man in the neighborhood and a man that knew him. The question for you to consider is whether or not you could pass a $100.00 bill on anybody who didn't know you, unless it was a bank. That is a question of fact for your consideration, and I do not suggest the answer. Now, did he pass the bill? He said he did, he bought the suit for $25.00, and he either received $75.00 or $73.00 in change, depending upon whether he bought a shirt or so [fol. 672] that was taken out. That, of course, is not of very much moment. He did receive at least $73.00, he said so himself. Where did he get the money? Did he get it from this bookmaker? Did he get it from the defendant Berger? Where did he get it?

You have here the evidence; when you get beyond the point of the passing of the money by Jones you have here the evidence of Katz. Katz concededly is a several-times-convicted offender against the law, a man who has been punished by penal servitude, a man who was a defendant in this action. I am going to speak of him now once and for all as far as that is concerned, and this applies to all his testimony as to all the defendants. He is a man who concededly is going to receive consideration for coming here and telling his story. The Government must find its witnesses where it may. It could hardly be expected that the inside story with reference to any aggregation engaged in the passing of counterfeit money would come from highly reputable citizens. Katz is here before you. Katz, if he is telling the truth, is an accomplice. Katz' testimony must be considered carefully in view of all the facts. The fact that Katz went to State's Prison does not say that his testimony cannot be considered at all. Katz is not now on trial. He is here as a witness. The fact that he went to State's Prison as a defendant convicted in a criminal case entitles you, and it is your duty in weighing his testimony, [fol. 673] to determine whether you would give the same weight and credence to the testimony of a ma who had been convicted of a crime that you would to a person who had lived a blameless life. Considering his testimony carefully because of his alleged association with this transaction and with the defendants, considering the fact that he is an ex-convict, what are the facts and circumstances proven by witnesses other than Katz? Do they corrobo-

rate, do they lend support to the truth of his story, or do they not? Taking the testimony of people who are not convicts or ex-convicts, taking the testimony of people who have no records, is there corroboration of Katz? That is for you to say. It is for you to determine if that testimony supports his story, shows to you that his story is in part true, from which you may go further and determine whether it is all true, or what part is true, or whether it is all false, or what part is false.

Now we take Jones. Did Jones know Katz? Did Jones know the defendant Berger? How well did he know him? Did the defendant Jones have a place in the same building where Berger had his office, where Jones dispensed lunch? Did Berger go there at times? Did he know Jones? Did Jones know the woman Siegel, because she might have come into that building to see Berger? Did the defendant Berger take the defendant Jones to the apartment on 57th Street? Did he there introduce him to Katz? Did Katz give coun- [fol. 674] terfeit money to Berger, stating that he didn't know Jones, and did Berger give the counterfeit money to Jones which Jones disposed of to Berger, the tailor? If Jones did not get the the money from Berger, who did Jones get the money from? Did he get it from Katz, either at 57th Street, or from Katz as a runner for bookmakers, or in some other way? Jones says he got it from a bookmaker. Then it is for you to say whether Jones in any way changed or modified or attempted to modify that. You heard his testimony. I will make no suggestion. I simply call your attention to it. When Jones was interrogated did he describe the man from whom he said he got the money? Did that description fit Katz? You heard it, the height, weight, color of hair, facial appearance with reference to possible race. Did it fit Katz? Did it fit anybody here? Did that description fit the defendant Berger or did it not? Where did Jones get the money, that is the question. Did he know it was counterfeit or have reasonable grounds to believe it was counterfeit, or did he not? Did he act in a perfectly honest way? When he went to New York with the Goldstein woman did he there pass it, honestly believing it was good?

You heard the testimony of Jones. If I am in error, disregard what I say. Jones said he was intoxicated on the day in question, but according to his testimony he was

oriented as to time and place. Let me make this plain. According to his testimony he knew where and when he [fol. 675] was at all of those times. He knew when he was in Long Island City, he knew, he said, what he did. He knew when he went to New York to the hockey game. Those things he knew. His loss of recollection was mathematical. When called upon to explain as to the amounts of money at various times, his condition made it impossible for him to make any explanations. If I am in error, disregard it. But as I remember it, that is his story. Is that a probable story? That is for you to say. Do drunken men know every place they are, when and how and where, and are they able to fix times, and simply unable to perform as mathematicians to tell the amounts of money they receive and disburse? It is for you to say whether that explanation is a true one. So much for Jones on the substantive count.

We come to Berger. Now, coming right to the point, if Berger did not give the money to Jones, then Berger did not commit this substantive crime that is charged here of aiding and abutting, because it isn't charged that Berger actually passed the money to this Berger, the tailor, it isn't charged that he passed the money to the woman Goldstein. It is charged that he aided and abetted by giving to Jones the money which Jones passed, and therefore he aided and abetted; and one who aids and abets in the commission of a felony is guilty as a principal. Now, did he? He knew Jones, he said he knew him because Jones was there in the [fol. 676] building. Did he go over with Jones to this Goldstein woman as a real estate adviser for Jones as to the wisdom of taking over this concession or lease or whatever it might have been? He was in the real estate business, he said that himself. Did he take Jones over to the apartment on 57th Street? Did he know Katz? Did he know Katz by reason of visits to this apartment? Had he seen Katz there? Did he know anything about Katz other than meeting him there socially? You have Katz' story. It is for you to decide how much of what Katz told is corroborated here by anybody else. Did Berger know Katz? Did he know anything about Katz? Did he know anything about the business that Katz was engaged in? Was he the intermediary between Katz and Jones? Was he or was he not? He took the stand, and he, of course, admitted that

he had been convicted of a crime. He cannot be convicted of this crime simply because he was convicted of one before, whether years ago or yesterday, it would not make any difference. That isn't proof of the commission of this offense, but it is something that you have a right to take into consideration when you determine whether you will believe all, or what part, or reject all, or what part, of the testimony of Berger. You have a right to say whether you will give the same weight and credence to the testimony of one who has been convicted of crime that would to a person who had [fol. 677] led a life that was free from such conviction. Did the witness Berger tell the truth with reference to his business affairs when he obtained his license as a real estate broker, when he obta-ned the pistol permits? Is that a pardonable failure, does that play any part in your determination as to what credit you will give to his testimony under oath here? That is the only purpose of it. He cannot be convicted of this crime because he failed to state in his application for a permit for a pistol or for a real estate broker's license that he had been convicted. That isn't proof of the commission of this crime at all. It is simply something that you have a right to consider in determining the weight and credence that you will give to his testimony on this trial.

What were his relations? He said he had to live. We all have to live, but there are many ways of gaining a livelihood. He didn't have to live as a real estate broker. There are other occupations open. What was his business at or about this time? He brought witnesses here as to his character, most of whom knew him in days subsequent to his original conviction. You heard that testimony. The fact that a man was once convicted of a crime of course does not damn him forever. A man who is convicted of a crime and pays his penalty may come out and gain a good reputation, and he is not to be damned forever for the one conviction. But a man must be judged by his conduct sub- [fol. 678] sequent to that time. What was the conduct of this man? Is it such as to impress you with his truthfulness? It is for you to say. He was in business, he was collecting rents, he said he had these two apartments at about this time, one of which I think he said he lost by foreclosure during the depressed conditions. What is the fact, Gentlemen? Was he engaged solely in the real estate

business, and for his pleasure attended at this apartment on 57th Street? Well, if a man does not violate the law I do not know that we can set ourselves up as judges to determine what they may do or what they may not do; if they keep within the law, then legally they can do what they please. But there is the fact, there is the place where he was finding amusement, finding his pleasure. There were his associates over there, one of whom was Katz. Was this man honestly engaged in the real estate business and only that? That is for you to say. Or was he engaged in some other effort with Katz? If he was engaged honestly in the real estate business and nothing else, then you can put out of your minds 57th Street, because that doesn't come in it. If he wasn't engaged solely in the real estate business, but was engaged with Mr. Katz in this enterprise of Katz' of circulating counterfeit money, then of course, the opportunities he had of observing Katz, of meeting and associating with Katz, are to be considered in determining [fol. 679] the weight and credence you are going to give to his testimony, and whether those facts in any sense corroborate Katz.

That brings us to the defendant Rice. The defendant Rice is included in all of these counts. If I understand his testimony correctly, and if I am in error disregard what I say if I understand the testimony correctly and the contention of the Government correctly, the Government contends, and they contend that their evidence shows, that this defendant Rice was the source from whence all of this money in question came. There was a little misstatement, unintentional, of course, in the summation when somebody said that when Agent Fitzgerald was asked to determine whether the money was counterfeit, he had to examine it with a magnifying glass. That isn't true, if your recollection accords with mine; if it doesn't, disregard mine. Agent Fitzgerald took the stand and testified freely without any magnifying glass that the money was counterfeit, but when Agent Fitzgerald was asked to testify whether all of the bills in evidence, all of the hundred dollar bills in evidence, were printed from the same plate he then took the magnifying glass to examine them and did examine parts of the bills. What parts, I do not know, of course you do not know, but he did examine certain parts of the bills, and then he said they were all made from the same

plate. That, of course, is a circumstance which is of moment, because if all the bills were made from the same plate, then of course we could safely assume that the bills [fol. 680] came from the same source originally.

Did they all come from Rice? Did most of them come from Rice? Again, that is a question of fact. You have Rice here testifying; you have his witnesses testifying as to his character. They testify and he does, and the man who was in his employ, that he was engaged in a legitimate business as an engraver. Apparently that is not contradicted. He was engaged in a business as an engraver of jewelry at a certain place on Broadway in New York. That is true. If Mr. Rice had nothing to do with these bills, and if he didn't give them to Katz, certainly then as to all but one of them at least he has committed no offense. Of course, as to the one bill which is not charged here as a substantive crime because it was passed in Manhattan, that is a bill passed to Lewis, that stands in a little different situation in that it was passed by Rice himself. That has no relation to the substantive crimes charged here; it only has relation to the count of conspiracy which includes all of them.

Mr. Rice has also testified he was engaged in a legitimate business, he was at his own business. Katz says, you heard him testify, Katz said the bills were given to him by Rice. Katz said Rice sent him over to Brooklyn to buy the ring. Did Katz take the ring and give it to Rice, and Rice give it to somebody to sell? And by a strange coincidence, the [fol. 681] man who looked at the ring recognized it, said it was his own, and there wasn't any sale. Did the defendant Rice go with Katz to Brooklyn? Did the defendant Rice send Katz to Brooklyn to buy this ring from Piccione? Those are substantive counts here now. Did he give him the counterfeit money to do it? That, of course, depends on the testimony of Katz, but is there any evidence at all which would in any way corroborate Katz as to his relations with the defendant Rice?

The defendant Rice had in his employ one Lee, and the testimony came out here in the trial that Lee was an ex-convict. There is no doubt about that because he testified here, and Katz mentioned it. Katz was an ex-convict also. Was Katz related to Lee? Mr. Rice said his only relation to Katz was that Katz brought an emerald to *me* remounted

for his wife. That would have been perfectly legitimate. How many times did he have to go there? If a man is bringing in an emerald to be remounted, where would he do business, at your office or in a restaurant? That is for you to say.

Was Lee an ex-convict? He was. Katz said he was an ex-convict. At the time of Mr. Rice's arrest, as he says, it was a coincidence that there were found there two other men, noted criminals in the underworld. Mr. Rice says it is a coincidence, an unfortunate one. Were they there for legitimate business? As I remember, and if I am wrong it is your recollection that will govern and not mine, he says that one of them was there with reference to a watch [fol. 682] that he wanted to have either a new dial or to have the dial cleaned. That was the occasion for the one man being there. I think that is correct, I do not want to misstate anything.

We have Katz and I have advised you as to him. The agents of the Government, the special agents that were called, their testimony is not to be given any greater weight merely because they were officers of the Government, and by the same token it is not to be given any less weight. They have no personal interest in this prosecution; they are officers of the law.

Was Mr. Rice engaged in a legitimate business with reference to Katz? Did Katz call Mr. Rice on the 'phone from the newspaper office? Do you believe Agent Godby or do you not? It is a question of fact for you to determine. You heard his testimony as to listening in; you heard his testimony as to what Katz said, and the answer in a voice that he did not then know, but when he later in the day heard the voice, the voice of Rice, he recognized that as the voice that he heard over the telephone. That is Agent Godby's recollection. Is his recollection correct or did he make a mistake? Was it the voice of Rice or was it not? I suggest no answer. It is for you to determine. What was said over the 'phone? Was an appointment made for a specific place? Was it a place that was open, a street corner where anybody would walk by, or was it a place where a [fol. 683] person would be known if they arrived there? That is for you gentlemen to say. Was there an appointment made for Roth's Restaurant? What it kept by the defendant Rice or was it not? When the defendant Rice ar-

rived there and found Katz did he or did he not have a conversation with Katz? Agent Godby has testified. Do you believe him or do you not? Rice testified. Do you believe him or do you not? The same is true with reference to Katz. What was said when Rice arrived? It is important. He was there, Katz was there. Was there any discussion as to business, as to the mounting of the emerald, or any other thing, or did the defendant Rice warn Katz not to come any more to his office, and suggest to Katz that he remove himself? Was that done or was it not? If that is so, was that the act of an innocent man engaged in an honest undertaking? Did he tell Katz not to call him on the 'phone, and if he wanted him, to send somebody? Is that the way an honest business man acts with a customer, or is it not? Was there any reason why he didn't want Katz to come to his office? Did he state the reason? Does that corroborate Katz or does it not? Is Katz telling the truth when he said he went to Nat Lewis' place with the defendant Rice, who had a hundred dollar bill, and that he saw Detective Marty Owens, that he knew him, and that thereupon Katz left and Rice remained and Rice passed the counterfeit one hundred dollar bill on Lewis? Is that correct or is it not? Rice, I [fol. 684] think, suggested, I may be wrong, that the money came to him from Katz. Is that true? Was Katz a distributor of this money? Did Katz distribute the hundred dollar bill to Mr. Rice? Did Mr. Rice believe it was good money? In passing was there any reason for Katz giving the hundred dollar bill to Mr. Rice at that time? Where is the truth, who is telling the truth? I suggest no answer. I call your attention to the testimony, I am trying to call your attention to testimony on both sides, with no bias; it means nothing to me. I want to direct your attention to these things, because when you consider the testimony of Katz I want you to consider if there is testimony that corroborates him.

Concededly there is no testimony here that Rice was meeting these people in 57th Street. There has been some little talk about marital difficulties. They are not any evidence of the commission of any of these offenses. We are not deeply concerned with that. If he had some differences with his wife, he had them, but that would not make him guilty of this crime. It is for you to say whether that interferes in any way with his credibility, and that is the only

purpose for which that could be considered. Rice has no conviction; he comes here before you. Is he an honest business man who has been brought into contact with criminals unknowingly, not one but more, or was he a man engaged in legitimate business in the day time, and, in the hours when [fol. 685] business was not brisk, engaged in this circulating of counterfeit money through the aid and instrumentality of Katz? You know Katz' record. Is that the kind of a man that would be the circulator, or is it not? Was the association of Mr. Rice with Lee that of the humanitarian who is endeavoring to aid a man who has made a mistake, had been convicted of a crime, and who was working his way back to decency? Is that the explanation? Did Lee introduce Katz to him? I do not know for what purpose, there is no evidence here of any purpose being stated. Was it just one of those things that happened that these other criminals should be found in this place at the time of the raid, having no relation to this matter at all? Is Rice the victim of circumstances? Is that the answer? Or is the answer that when Rice was not engaged in his legitimate business he was in concert with these criminals, this criminal Katz at least, engaged in circulating counterfeit money, all of which was printed, the hundred dollar bills at least, in the same place? There is the question of fact for you gentlemen, the answer is to be given by you, not by me. I have studiously avoided, as far as possible for me to do so, making any suggestions to you as to any of these answers. I tried freely and openly to give you what is to be said on each side of the proposition, but the facts are for you to [fol. 686] determine. So much for the substantive counts.

Now comes the question of conspiracy. This is entirely different, and I would like you, if you will, to pay attention because these men, Rice, Berger and Jones, are entitled to your separate consideration on each count. The number of counts are grouped in an indictment, but each count represents a separate and distinct crime, and you have no right to just sit down and say, "No" or "Yes" as to the whole thing. You cannot treat it as an entity. You must determine each count, because remember men can be not guilty of all counts, men can be guilty of all counts, man can be not guilty of some counts and guilty of other counts. So you can't just average it, you mustn't just lump it. You must

give separate consideration to each defendant as to each count in the indictment, because each one is a separate crime, and the defendants are entitled to that.

The crime of conspiracy is not a substantive crime. The crime of conspiracy consists in confederating and agreeing together to do, as alleged in this, some acts which are in violation of the statutes of the United States. That is the charge here, and while conspiracy may be broader, there is no use burdening you with anything else beyond that.

It is alleged here that the conspiracy was formed to carry into effect the passage of counterfeit money, the passing, uttering or attempting to pass counterfeit money.

[fol. 687] Conspiracy is the confederating and agreeing together, it is the agreement, it is the meeting of minds. There must be some plan that is to be accomplished, there must be some way in which that is to be accomplished, and there must be agreement generally to do certain things. It does not mean that all those charged with conspiracy are bound to sit around a table and adopt resolutions, or anything of that kind; there is no such formality required. Nor does it mean that all of them need meet together at the same time, because they may come in at different periods, one may be the intermediary between some of the conspirators, but there must be a general scheme as to which all of them agree to lend their particular efforts. One may do one particular line of work, another may do another line of work, and so it may be divided. It is not necessary that they shall all do exactly the same thing or the same part of the work. One may provide the means, another may agree to take those means and through his instrumentality commit the crime. In other words, one may have control of a large amount of counterfeit money, and there may be an agreement that that money shall be distributed, and one may go forth and enlist the services of others in the furtherance of this common plan. But it must be in the furtherance of the common plan; there can't be three or four different plans. There must be one plan, and all of them must bear their part.

[fol. 688] It is the agreement, it is the agreement to do it, not the doing of it, but the agreement among those who are in the plan; and it is not necessary that the crimes that they conspire to commit shall be actually committed, because when actually committed they become substantive

crimes. It is the agreement to commit the crime. But while the agreement may be made in a most formal or informal manner, there still would be no crime unless there be done for the purpose of effecting the object of that conspiracy some overt act. You might meet together and agree to all the things on earth that are against the law, but if no overt act is committed in the furtherance of that conspiracy, there wouldn't be any crime. That is the reason I called your attention to overt act.

There were alleged here certain overt acts and the Government must prove at least one of them in order to vitalize the conspiracy. An overt act in and of itself need not be an act which is a crime, provided that it is an act which is performed in furtherance of the conspiracy and for the purpose of effecting the object of the same. Did these men conspire together? Was this man Rice in possession of a quantity of counterfeit money? Did he seek to put that money into circulation, and did he draw into conspiracy with him for that purpose Katz, and did he and Katz, with a common purpose of putting that money into circulation, proceed, and did Katz, as a part of that conspiracy and for the purpose of effecting the object of it, enlist the services [fol. 689] of these defendants Jones and Berger? Was Jones the passer of this money in pursuance of this conspiracy and for the purpose of effecting the object, or was the act of Jones in passing the money an individual act disassociated from Berger and Katz? Was it an innocent act of Jones, passing money that he had gotten in a perfectly innocent way, or was it an act done in furtherance of this conspiracy to circulate counterfeit money? Did this defendant Berger, as a part of that, act as the intermediary between Katz and Jones, or did he not? If he didn't, he is out, there is no question about that. If he did, then was he a part and parcel of this conspiracy? Was there a conspiracy? If there wasn't, that is the end of it; if there wasn't a meeting of the minds between Rice and Katz, Katz being the man who, under the evidence, could probably be charged with being chief distributor, then the conspiracy count between them is out. Was there a meeting of their minds to put this money into circulation, or was there not? Was Rice just a business man doing some business with Katz? Was Rice the innocent victim of Katz with reference to the hundred dollar bill? That is for you to say.

If there was a meeting of minds between Rice and Katz, then did Katz, in furtherance of this, enlist the services of these two other defendants, and did they, with the common purpose, that of violating the laws of the United States by having in their possession counterfeit money with the intent to pass, or utter and pass, this counterfeit money, do the [fol. 690] acts that are here charged? I am not going all over them again. Let me say to you if a conspiracy existed then the actions or the statements or the declarations of any of the conspirators would bind all the others, if there was a conspiracy, up to the time of the arrest, and then the conspiracy ended. Anything that was said by any of these people subsequent to the arrest binds only the persons that made the statement, and not the others that were in the conspiracy, for the conspiracy ended with the arrest. Any statements made subsequent to the arrest would not bind them, if there was a conspiracy; but the statements or acts of anyone who was a conspirator prior to the termination of the conspiracy by the arrest bound all the others.

They are bound by that just as though they had done it and said it themselves. Now, that is a question of fact, and I suggest no answer. It is for you to answer those questions.

Let us have this distinctly understood, that there is a clear division of duty between us. You must take what I say as the law whether you believe it is the law or not. If I make an error, that can be corrected. If you assume to interpret the law for yourselves contrary to the way I give it to you, and you make a mistake, nobody in the world could correct that error, because nobody could discover that you made it, because it would be assumed you had hewed to the line and stuck to your duty and did what I told you and determined only the facts. I am not going to interfere with your duties; you are the sole judges of the facts, I am not. [fol. 691] So far as this case is concerned now, I am the sole judge of the law, and you are not. Take it from me as I give it to you. It is the law of this case.

Evidence of good character has been offered here. That evidence must be considered with all other evidence. It cannot be considered separate and apart, because there is no such rule. All evidence must be considered together, and when there is evidence of good character, you must consider that with all the other evidence. You have to determine what weight you will give to it. Good character, how-

ever, is an asset. Good character, if proven, sometimes will create a reasonable doubt as to whether a man of that character would do things that are charged against him. But it has to be considered with all the facts because it is a fact. You cannot just take a part and consider it, you must consider it all and determine it all together.

Now, whom are you going to believe? There is a rule that you can use: In the first place, you observe the manner and demeanor of the witnesses on the stand. The next thing that you consider is their interest. Katz is an interested witness; each one of the defendants is an interested witness, vitally interested. Who struck you as telling the truth? Take each one that went on the stand, did he or she testify freely, without any hesitation, without any apparent attempt to conceal, or did he or she evade answering questions, or did any of the witnesses or all of the witnesses, as the case may be, testify openly, freely, as though [fol. 692] they were attempting to tell the truth and aid in the solution of the problem presented to them at that time by their testimony. It is the duty here of the Government to prove the case. Did everybody testify freely, or did any of the witnesses seem to evade? Consider that. You know when you were brought here to sit on this jury you weren't supposed to take any stilted position, to put yourself upon a pedestal and become inhuman. That wasn't the idea at all. You were brought from out of the midst of people from all walks of life to bring to bear upon the solution of the problem that is presented to you now the experience you had gained in your intercourse with the world at large. You have your own way of telling whether people are telling the truth; there is no question about that; we all have it, it seems to be inherent. If any witness who has taken this stand has knowingly and willfully testified falsely as to a material fact, not some immaterial thing, but as to a material fact, then you have a right to disregard all the testimony of that witness. You are not bound to do it, because you may accept that which you believe to be true and reject that which you believe to be false. It is a rule of human reason that you have a right to apply here.

You have exhibits; consider them, take them with you, you can examine them. They are there, they speak for themselves. They have been offered here as evidence, and you have a right to consider them.

[fol. 693] Gentlemen, without any sympathy, without any prejudice, without any bias, decide this case, and remember that any rulings I have made, any motions I may have denied, any rulings I may have made admitting or rejecting evidence, have absolutely no concern with you whatever. I say that with all respect. That was my particular duty on the law, to endeavor to see that this trial was conducted under the correct principles of law, and that no testimony was received other than that which the law allows, and to determine questions of law. Once or twice you have left the court room at my request when questions were delivered to me, and they were only and solely questions of law. And when you came back and I rendered my decision, that, Gentlemen, had no weight with you. Do not try to find out why I did it; it doesn't mean anything that you should consider. It was just the performance of my duty, so that there might be presented to you a case which you could properly decide.

Take the case and decide it as your oath requires you to do upon the evidence, upon the instructions of the Court, drawing from the evidence reasonable inferences which you have a right to draw, but determining the case on the evidence not on speculation.

Is that all?

Mr. Wegman: If your Honor please, there is just one exception that I would respectfully direct your Honor's attention to.

The Court: Make it.

[fol. 694] Mr. Wegman: That is that on the testimony, on all of the testimony that was introduced, there isn't any suggestion whatsoever that the defendant Berger was engaged in any business other than the real estate business; and the testimony of the witness Katz, Katz testified that Berger's only part was to introduce Jones to Katz. Therefore I respectfully except to that portion of the charge which may perhaps indicate that Berger had any part in the alleged conspiracy as contended by the Government other than to introduce Jones to Katz. And I respectfully ask your Honor at this time to so charge the jury.

The Court: I told them that, didn't I? I told the jury that three times, that the Government alleged that Berger had introduced Jones to Katz, and that Katz gave the money

to Berger and Berger gave it to Jones. That is the charge I have delivered as to Berger.

Mr. Wegman: There is one other thing, there was no suggestion of any kind that Berger was to profit in any way whatsoever from the transaction.

The Court: I do not know. Let the jury determine that themselves. I do not remember anything about that, and I do not assume to cite testimony. I call their attention to certain points, and let them supply the testimony for themselves. I have cited no testimony, as I remember, except that which was conceded; I haven't charged any-[fol. 695] thing except that which was conceded, other than simply ask them questions and let them decide it for themselves.

Mr. Singer: I would like to have the record show the exhibits that are going into the jury room. Among those exhibts that are not to go in are those two statements.

The Court: That is correct, the two statements that I ruled out as not to be read against any of these other defendants, but retained them only as against two defendants as to whom they are offered. They are not to be submitted to the jury.

Mr. Singer: They have not been.

The Court: Will you please, all counsel, bring the exhibits over to the middle table, let all the counsel look them over before they go to the jury room, and see that nothing is sent in that isn't in evidence. Let all counsel look at them so we will have no question about that.

(The jury retired at 12:10 P. M.)

(The jury returned at 4:25 P. M.)

VERDICT

The Clerk: Gentlemen of the Jury: Have you agreed upon a verdict in the case of United States v. Jack Rice, Harry Berger and Howard Jones?

The Foreman: We have.

The Clerk: How do you find as to the defendant Rice?

[fol. 696] The Foreman: We find the defendant Rice guilty on Counts 7, 8 and 9, and not guilty on Counts 1, 2, 3, 4, 5 and 6.

The Court: How do you find the defendant Berger?

The Foreman: We find the defendant Berger guilty on the ninth count and not guilty on the seventh and eighth counts.

The Clerk: How do you find the defendant Jones?

The Foreman: We find the defendant Jones guilty on the seventh, eighth and ninth counts.

The Clerk: Gentlemen of the Jury, you say you find the defendant Rice not guilty on the first, second, third, fourth, fifth and sixth counts, and guilty on the seventh, eighth and ninth counts?

The Foreman: Right.

The Clerk: You find the defendant Berger not guilty on the seventh and eighth counts and guilty on the ninth count?

The Foreman: Right.

The Clerk: You find the defendant Jones guilty on the seventh, eighth and ninth counts?

The Foreman: Right.

Motions to Set Aside Verdict

Mr. Kamber: On behalf of the defendant Rice I make a motion to set aside the verdict of the jury on the ground [fol. 697] that it is contrary to the law and contrary to the evidence.

The Court: Motion denied; you have an exception.

Mr. Kamber: I further make a motion to set aside the verdict of the jury upon all the grounds made at the close of the Government's case and at the close of the entire case upon the several motions made.

The Court: Motion denied and you have an exception.

Mr. Wegman: I make the same motions, if your Honor please, that Mr. Kamber has made.

The Court: That is as to the defendant Berger, who has been found guilty on the one count of conspiracy. Motion denied, and you have an exception.

Mr. Wegman: I further move to set aside the verdict on the ground that the evidence on the conspiracy count failed to establish the conspiracy alleged in the indictment, and I cite your Honor the case of Tinsley v. United States, 43 Fed. 2nd, page 890.

The Court: Motion denied; you have an exception.

Mr. Crooks: On behalf of the defendant Jones, I make the same motions that Mr. Kamber has made.

The Court: Motion denied, and you have an exception.

[fol. 698] SENTENCE

March 27, 1934.

The Court: Rice, you were found guilty on the seventh, eighth and ninth counts. As I remember, the seventh and eighth were substantive counts, and the ninth was the count of conspiracy. The sentence of the Court is that you shall be confined in a penitentiary or prison camp to be designated by the Attorney General or his authorized designated representative for the term of five years and pay a fine of one dollar on Count 7, five years and pay a fine of one dollar on Count 8, for two years on Count 9, the imprisonments in all instances to run concurrently.

For you, Jones, the part that you played here is one that is played too often by men of your calibre. The sentence of the Court is that on Count 7 you be confined in a penitentiary or prison camp to be designated by the Attorney General or his authorized representatives for a period of three years, and pay a fine of one dollar, on Count 8 three years and pay a fine of one dollar, and on Count 9, that you be imprisoned two years, all imprisonments to run concurrently.

You, Berger, might have helped us a little more than you have. I am not going into any talk, I do not make speeches to a man who cannot answer. The sentence of the Court is—you were found guilty only on the count of conspiracy; the jury treated you lightly. The sentence of the Court is that you be confined in a penitentiary or prison camp to be designated by the Attorney General or his authorized representative for the term of one year and one day.

[fol. 699] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

STIPULATION AND ORDER AS TO EXHIBITS

It is hereby stipulated and consented, by and between the United States Attorney for the Eastern District of New York and the attorney for the defendant-appellant herein, that the printing of reproduction of the Government's Ex-

hibits 1 to 11, inclusive, offered and received in evidence on behalf of the Government, and of the defendant's A to D, inclusive, offered and received in evidence on behalf of the defendant, on the trial of the above-entitled cause, descriptions of said exhibits being noted herein, be and the same hereby is waived, and the said exhibits, or any of them, may be presented to the Court by either side on the argument of the appeal herein, with like force and effect as though physically produced in the record herein.

Government's Ex. 1. A $100 Federal Reserve Note, alleged to be a counterfeit.

[fol. 700] Government's Ex. 2. A $100 Federal Reserve Note, alleged to be a counterfeit.

Government's Ex. 3. Statement of Edward Jones.

Government's Ex. 4. Sixteen $20 Federal Reserve notes, alleged to be counterfeits.

Government's Ex. 5. A $100 Federal Reserve Note, alleged to be a counterfeit.

Government's Ex. 6. A $100 Federal Reserve Note, alleged to be a counterfeit.

Government's Ex. 7. A $100 Federal Reserve Note, alleged to be a counterfeit.

Government's Ex. 8. Statement by Angela Joyce Molnar.

Government's Ex. 9. Statement by Angela Joyce Molnar.

Government's Ex. 10. Application by Harry Berger for pistol permit.

Government's Ex. 11. Application by Harry Berger for renewal of pistol permit.

(Photostatic copies of Government's Exhibits 10 and 11, will be produced at the argument of the above appeal.)

Defendant's Exhibit A. Photograph of Jack Katz.

[fol. 701] Defendant's Exhibit B. Plan or layout of office of Jack Rice.

Defendant's Exhibit C. A black box taken from the safe of Jack Rice.

Defendant's Exhibit D. Photographs of Jack Katz.

Dated: New York, August 15th, 1934.

Leo J. Hickey, per Emanuel Bublich, United States Attorney. Sydney Rosenthal, Attorney for Defendant Harry Berger.

So ordered, Manton, U. S. J. C.

[fol. 702] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION SETTLING BILL OF EXCEPTIONS

It is hereby stipulated, consented and agreed by and between the attorneys for the respective parties hereto, that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties and contains all the evidence taken on the trial of this action. That same has been prepared within the time allowed by law and the Court, and that it may be settled and ordered on file as the Bill of Exceptions herein.

Dated: New York, August 23, 1934.

Leo J. Hickey, Attorney for Plaintiff-Appellee.
Sydney Rosenthal, Attorney for Defendant-Appellant.

[fol. 703] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTLING BILL OF EXCEPTIONS

Upon the stipulation of Sydney Rosenthal and Leo J. Hickey, hereto annexed, and dated the 23 day of August 1934, it is

Ordered that the foregoing record be ordered on file as the Bill of Exceptions and transcript of record in the above entitled matter.

Dated: New York, August 23, 1934.

Marcus B. Campbell, United States District Judge, Eastern District of New York.

[fol. 704] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR

And now comes Harry Berger, the defendant, appellant, by his attorney, and makes the following assignments of error which he avers occurred upon the trial of this action.

(1) The Court erred in denying the defendant's motions made at the close of the Government's case to dismiss the indictment and for a direction of a verdict of acquittal.

(2) The Court erred in denying the defendant's motions made at the close of the entire case to dismiss the indictment and for a direction of a verdict of acquittal.

(3) The Court erred in denying the defendant's motion [fol. 705] to set aside the verdict of the jury and for a new trial.

(4) The Court erred in the admission and exclusion of evidence over the objection of the defendant-appellant, which errors will be more specifically set forth in Amended Assignments of Error to be hereinafter submitted.

Wherefore, said defendant-appellant, Harry Berger, prays that the aforesaid judgment may be reversed, and that he may have such other and further relief as may be just in the premises.

Dated: March 28th, 1934.

Sydney Rosenthal, Attorney for Defendant-Appellant, Office and P. O. Address, 10 Court Square, Long Island City, Borough of Queens, New York City.

[fol. 706] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED ASSIGNMENT OF ERRORS

And now comes Harry Berger the defendant-appellant, by his attorney and makes the following amended Assignment of Errors, which he avers occurred upon the trial of this action.

1. The Court erred in denying the said defendant's motion made at the end of the government's case to dismiss counts 7, 8 and 9 in the said indictment and to acquit the said defendant.

2. The Court erred in denying the said defendant's motion made at the end of the entire case to dismiss the

indictment and direct a verdict of acquittal of this defendant.

3. The Court erred in denying the said defendant's motion made at the end of the entire case to direct, on the evidence, a verdict of acquittal of this defendant of the conspiracy count No. 9 in the indictment.

[fol. 707] 4. The Court erred in denying the said defendant's motion made at the end of the entire case to direct a verdict of acquittal on the evidence as against the said defendant.

5. The Court erred in denying the defendant's motion to set aside the verdict of the jury.

6. The Court erred in denying this defendant's motion to set aside the verdict, on the ground that the evidence failed to establish the conspiracy alleged in count No. 9 of the indictment of which this defendant was guilty.

7. The Court erred in denying the defendant's motion to set aside the verdict of the jury and in failing to grant a new trial.

8. The Court erred in permitting the Assistant United States Attorney to cross-examine the witness Harry Turoff as to whether he heard this defendant was convicted in December, 1924 of the crime of Robbery in the Third Degree, was sentenced to Sing Sing from one to ten years and if he did hear that would that change his opinion as to whether this defendant's reputation was good or bad.

9. The Court erred in allowing the Assistant United States Attorney to ask whether it would make any difference to the witness Harry Turoff in his testimony of good character if he found that this defendant had been arrested for perjury on January 18th.

10. The Court erred in denying this defendant's motion [fol. 708] to strike out the evidence of the witness Vitola Piecione as not binding upon this defendant.

11. The Court erred in allowing the Assistant United States Attorney to lead the witness Harris throughout his testimony over the objection of the defendant.

12. The Court erred in denying this defendant's motion to strike out the testimony of the witness Harris and to direct the jury to disregard that testimony and not to consider it as binding upon this defendant.

13. The Court erred in allowing the Assistant United States Attorney to lead the witness Jack Katz throughout his testimony over the objection of this defendant.

14. The Court erred in allowing the witness Katz to refuse to give the name of a man who was in the apartment of the defendants, Talle & Molnar, with him when he was found there by the defendant Berger.

15. The Court erred in admitting in evidence as Government's Exhibits No. 8 and 9, the statements of the defendants Talle and Molnar, such statements having been made in the absence of this defendant and relate to acts done by persons other than this defendant in the absence of the said defendant, and over which this defendant had no control, and which statements had no probative force with reference to the issue at hand, and which statements were not [fol. 709] confessions or admissions against interest, which error was not cured by the Court thereafter directing the jury not to consider these statements as against this defendant, the said statements containing matter which was extremely prejudicial to this defendant.

16. The Court erred in stating with reference to government's exhibit 8 and 9, "I consider the paper of quite some moment to me."

17. The Court erred in allowing the witness Godby to testify that the defendants, Talle and Molnar, had told him they were present in the apartment when Katz delivered the counterfeit bills to Harry Berger who in turn handed them to the defendant Jones; the said testimony being mere hearsay as a recital of a conversation held by the witness with persons other than this defendant in the absence of this defendant and which said error was not cured by the Court thereafter stating that the testimony does not bind Berger, the said error being extremely prejudicial.

18. The Court erred in admitting in evidence government's exhibits 1, 2, 4, 5, 6 and 7 as against all the defendants and in making the statement, "There is a question of

a charge of conspiracy with relation to all of them" when all such exhibits were not connected up with this defendant and were not binding upon this defendant.

19. The Court erred in allowing the Assistant United States Attorney to ask this defendant's character witness, [fol. 710] Gross, whether he ever heard that the defendant went around and told people he was a lawyer.

20. The Court erred in allowing the Assistant United States Attorney to question the witness, Gross, on his knowledge of the law and the regulations concerning real estate broker's license.

21. The Court erred in allowing the Assistant United States Attorney to ask the defendant's character witness, Gross, whether the defendant having stated in his application for real estate broker's license that he had never been convicted, would he still say that he was a person of good moral character and that his reputation for truthfulness was good.

22. The Court erred in refusing to allow the witness, Gross, to state his present opinion of the character of the defendant after the Assistant United States Attorney had asked this witness on cross-examination whether his opinion of the character of this defendant was affected by the various alleged offenses of the defendant as stated by the said attorney.

23. The Court erred in allowing the Assistant United States Attorney to ask the witness, Gross, whther it would make any difference in his testimony about the good character of this defendant if he knew that this defendant had been arrested for the crime of Perjury in the Queens County Court.

[fol. 711] 24. The Court erred in refusing to have placed on the record a remark made by the Assistant United States Attorney which remark might have been exceedingly prejudicial to this defendant and which prejudice was not cured by the direction to the jury to disregard the remark.

25. The Court erred in allowing the Assistant United States Attorney to ask this defendant's character witness, Glatzer, if he knew that the defendant had lied under oath

on at least three occasions, would that change his testimony about his reputation for truthfulness.

26. The Court erred in stating that the point at issue is not the defendant's character, obviously giving the jury the impression that the defendant's character and reputation had no effect upon the matter or upon their deliberation.

27. The Court erred in allowing the Assistant United States Attorney to argue with this defendant and to give the impression that this defendant had threatened that he would give the Assistant United States Attorney "the works."

28. The Court erred in allowing the Assistant United States Attorney to request that the finger-prints of the defendant be taken during the trial and in stating that it couldn't make the defendant allow such finger-prints to be taken.

[fol. 712] 29. The Court erred in compelling the witness for the defendant to explain his attitude toward the Assistant United States Attorney.

30. The Court erred in requiring over the objection of counsel for the defendant, this defendant to state whether or not he thought the court, the jurymen, and counsel had had relations with the defendants Talle and Molnar; and further, the Court erred in commenting on that by stating to the jury, "He has answered that question that it was none of you."

31. The Court erred in allowing the Assistant United States Attorney to question this defendant concerning matters which were not in evidence such as why the police did not find out about his conviction when he applied for his real estate license, why he associated with the defendants Talle and Molnar, what right he had to do that, whether he said when he took the stand he would "take care of" the Assistant District Attorney, whether the Assistant District Attorney tells lies, who made notations on the pistol permit application, and which were foreign to the issues.

32. The Court erred in denying this defendant's motion for the withdrawal of a juror and for a mistrial after the

United States Attorney had asked the witness Wasserberger if he didn't tell him that the reason he wanted to take the girls out on bail for Berger was because he felt if he could get them out on bail they would not say anything against Berger; and especially since such questions were framed in the form of a statement, and as such statement [fol. 713] was mere hearsay and the recital of a conversation had by the witness and the Assistant United States Attorney in the absence of the defendant, over which the defendant had no control, and which statement gave the impression that this defendant was guilty and had much to conceal.

33. The Court erred in allowing the statement made by Jones and his testimony and in particular the description of the man from whom he had received the counterfeit bills to be considered against this defendant and in charging:

"When Jones was interrogated did he describe the man from whom he said he got the money? Did that description fit Katz? You heard it, the height, weight, color of hair, facial appearance with reference to possible race. Did it fit Katz? Did it fit anybody here? Did that description fit the defendant Berger or did it not?"

34. The Court erred in charging the jury:

"What were his (Berger's) relations? He said he had to live. We all have to live, but there are many ways of gaining a livelihood. He didn't have to live as a real estate broker. There are other occupations open. What was his business at or about this time? • • •

Was he engaged solely in the real estate business, and for his pleasure attended at this apartment on 57th Street? • • •

[fol. 714] If he wasn't engaged solely in the real estate business, but was engaged with Mr. Katz in this enterprise of Katz' of circulating counterfeit money, then, of course, the opportunities he had of observing Katz, of meeting and associating with Katz, are to be considered in determining the weight and credence you are going to give to his testimony, and whether those facts in any sense corroborate Katz."

35. The Court erred in allowing the Assistant United States Attorney in his summation to the jury to state what was not in evidence, that he had promised Katz he would be kept away from the defendants before and during the trial and would be sent to a different jail.

36. The Court erred in his charge to the jury in stating that "The question for you to consider is whether or not you could pass a $100 bill on anybody who didn't know you, unless it was a bank."

37. The Court erred in its charge to the jury in applying all of the alleged overt acts to this defendant in saying.

"If there was a meeting of minds between Rice and Katz, then did Katz, in furtherance of this, enlist the services of these two other defendants, and did they with the common purpose, that of violating the laws of the United States by having in their possession counterfeit money with the intent to pass, or utter and pass, this counterfeit money, do the acts that are here charged?"

[fol. 715] 38. The Court erred in failing to charge the jury that there was no proof that Berger was connected in any manner whatsoever with any alleged illegal transaction.

39. The Court erred in charging: "I have cited no testimony, as I remember, except that which was conceded."

40. The Court erred in allowing and permitting the Assisstant United States Attorney in his summation to attack this defendant savagely and dwell at great length upon matters which had no connection with the innocence or guilt of this defendant, to comment upon the evidence unfairly and to promote an atmosphere of prejudice against this defendant and his counsel.

41. The Court erred in permitting this defendant's character witness to be questioned whether the fact that the defendant had been arrested for perjury, had been convicted of robbery, had been sleeping with the female defendants, had been associating with the other defendants, had stated falsely on his application for a pistol permit that he had not been convicted, had failed to state on his application to become a Notary Public that he had been convicted of a felony, would affect their opinion of the defendant.

42. The Court erred in allowing and permitting the Assistant United States Attorney to make unsworn statements of fact without allowing and permitting this defendant an opportunity to cross examine the said Assistant United States Attorney.

[fol. 716] 43. The Court erred in failing to declare a mistrial after the witness Muniz had testified that one of the defendants belonged to the Masonic Order.

44. The Court erred in allowing the Assistant United States Attorney in his summation to attack the government's witness Goldie Goldstein.

45. The Court erred in allowing the Assistant United States Attorney in his summation to the jury to insert into the case facts which were not in evidence and of which he claimed knowledge but to which he did not testify.

46. The Court erred in allowing the Assistant United States Attorney to create an atmosphere of prejudice against this defendant throughout the trial by allowing him to ask improper questions, to argue with the witnesses concerning this defendant and permitting him to make unsworn statements to and in the presence of the jurors and in allowing and permitting the Assistant United States Attorney to antagonize and quarrel with counsel for this defendant and the other defendants.

47. The Court erred in entering the judgment against the defendant upon the verdict in this case.

48. The verdict of the jury is not supported by any competent evidence in the record.

[fol. 717] 49. The judgment of the Court is contrary to law.

Wherefore, the plaintiff-in-error prays that the said judgment of the District Court of the United States may be reversed and held for naught, etc.

Dated: August 21st, 1934.

Sydney Rosenthal, Attorney for Defendant-Appellant, Office and P. O. Address, 10 Court Square, Long Island City, Borough of Queens, New York.

[fols. 718 & 719] Citation in usual form omitted in printing.

[fol. 720] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR STAY—March 28, 1934

The above named defendant, Harry Berger, in the above entitled proceeding, having duly served and filed a notice of appeal from a judgment of conviction, and a citation [fol. 721] having been issued out of this Court of the United States Circuit Court of Appeals, for the Second Judicial Circuit, it is

Ordered, that the defendant, Harry Berger, be set at liberty by furnishing a bond of Seventy-five hundred Dollars, during the pendency of said appeal in the said Circuit Court of Appeals, in the Second Judicial Circuit, and until the mandate of said Circuit Court of Appeals shall be issued on said appeal, and in the meantime, all proceedings for the execution of the sentence be in all respects stayed, and the execution of sentence is hereby stayed until the final determination of the Appeal and Assignment of Errors by the Circuit Court of Appeals.

Marcus B. Campbell, United States District Judge.

[fol. 722] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING EXTENSION OF TIME TO PERFECT APPEAL—April 24, 1934

It appearing from the affidavit of Sydney S. Snyder, verified April 21st, 1934, that the within case cannot be docketed and the record filed with the Clerk of Circuit Court of Appeals, Second Circuit, prior to the 27th day of April, 1934, [fol. 723] the return day of the citation herein, and from the stipulation dated April 24th, 1934, that the United States Attorney for the Eastern District of New York has consented to extend the time of the defendant-appellant to docket said case and file the record thereof,

Now, upon reading and filing the said affidavit of Sydney S. Snyder, verified April 21st, 1934; and said stipulation

dated April 24th, 1934, and upon motion of Sydney Rosenthal, attorney for the defendant-appellant, it is

Ordered, that the time of the defendant-appellant to docket this case and file the record thereof with the Clerk of the Circuit Court of Appeals for the Second Circuit, be and the same hereby is extended to the 28th day of May, 1934.

Marcus B. Campbell, United States District Judge.

[fol. 724] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT AS TO EXTENSION OF TIME TO PERFECT APPEAL

STATE OF NEW YORK,
County of Queens, ss:

Sydney S. Snyder, being duly sworn, deposes and says, that he is the managing attorney in the office of Sydney Rosenthal, the attorney for the defendant.

That on or about the 23rd day of March, 1934, the defendant was found guilty under an indictment charging conspiracy to violate Section 263 and 265 of Title 18 of the United States Code.

That on or about the 28th day of March, 1934, an appeal was allowed by Hon. Marcus B. Campbell, United States [fol. 725] District Judge. A stay was issued and a citation was signed by the said Judge returnable on the 27th day of April, 1934.

That for the purpose of the said appeal, it is necessary to obtain and print the full Minutes of the trial of the said defendant. The said Minutes have been ordered by your deponent from the stenographers Sessions and Murdock. Mr. Murdock, however, has informed your deponent that he has at least two weeks work before he can commence to work on the Minutes in this case. That after starting to transcribe the Minutes in this case, he will have to expend at least twenty days on such minutes before they can be completed. That the record will probably amount to approximately seven hundred or eight hundred pages. It will therefore be impossible to file the Record on Appeal in the Circuit Court by the 27th day of April, 1934.

From the statement of the stenographer it would appear that the Minutes would not be in the possession of counsel for the defendant until at least the 28th day of May, 1934. It will thereafter be necessary to prepare the transcript and exceptions besides the points on appeal. As aforementioned, the record, however, is so cumbersome that at least one month will be required by the appellant to perform these duties.

Therefore it is sought that the time of the appellant to [fol. 726] docket the case and file the record thereof with the Clerk of the Circuit Court be extended to the 28th day of May, 1934.

Annexed hereto and made a part hereof is a stipulation in which the United States Attorney for the Eastern District of New York has consented to such extension.

Wherefore, your deponent respectfully requests that the time of the defendant-appellant to docket the case and file the record thereof with the Clerk of the Circuit Court of Appeals, for the Second Circuit, be extended to the 28th day of May, 1934.

Sydney S. Snyder.

Sworn to before me this 21st day of April, 1934.

Marguerite Nill, Notary Public, Queens County.

[fol. 727] In United States District Court

[Title omitted]

Stipulation as to Extension of Time to Perfect Appeal

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the return date of the Citation herein, be and the same hereby is adjourned from the 27th day of April, 1934, to the 28th day of May, 1934; and that the time of the defendant-appellant to docket this case and file the record thereon with the Clerk of the Circuit Court of Appeals in the Second Circuit, be extended to the 28th day of May, 1934.

Dated: New York, April 24th, 1934.

Howard W. Ameli, Attorney for Plaintiff-Respondent, by H. S. Singer, Asst. U. S. Atty. Sydney Rosenthal, Attorney for Defendant-Appellant.

[fol. 728] In United States District Court

[Title omitted]

Order Granting Extension of Time to Perfect Appeal—May 26, 1934

It appearing from the affidavit of Sydney S. Snyder, verified the 26th day of May, 1934, that the within case cannot be docketed and the record filed with the Clerk of the Circuit Court of Appeals, Second Circuit, prior to the [fol. 729] 28th day of May, 1934, the date to which the return of the citation herein was extended, and from the stipulation dated May 26th, 1934, that the United States Attorney for the Eastern District of New York has consened to extend the time of the defendant-appellant to docket said case and file the record thereof.

Now, upon reading and filing the said affidavit of Sydney S. Snyder, verified May 26th, 1934, and said stipulation dated May 26th, 1934, and upon motion of Sydney Rosenthal, attorney for the defendant-appellant, it is,

Ordered, that the time of the defendant-appellant to docket this case and file the record thereof with the Clerk of the Circuit Court of Appeals for the Second Circuit, be and the same hereby is extended to the 29th day of June, 1934,

Marcus B. Campbell, United States District Judge.

[fol. 730] In United States District Court

[Title omitted]

Affidavit as to Extension of Time to Perfect Appeal

State of New York
County of Queens, ss:

Sydney S. Snyder, being duly sworn, deposes and says, that he is the managing attorney in the office of Sydney Rosenthal, the attorney for the defendant.

That on or about the 23rd day of March, 1934, the defendant was found guilty under an indictment charging

conspiracy to violate Sections 263 and 265 of Title 18 of the United States Code.

[fol. 731] That on or about the 28th day of March, 1934, an appeal was allowed by Hon. Marcus B. Campbell, United States District Judge. A stay was issued and a citation was signed by the said Judge and returnable on the 27th day of April, 1934.

That on or about the 24th day of April, 1934, a further extension of time was obtained extending the time of the appellant to docket his case and file the record thereof until the 28th day of May, 1934. This extension of time was obtained since the stenographer did not and could not complete transcribing the minutes of the trial within the time limited.

These minutes were finally however delivered to your deponent only one week ago. They consist of six hundred and fifty typewritten pages. Originally your deponent believed that it would be necessary to print the full testimony in the record. An examination of the minutes discloses however that there is considerable testimony which does not involve this defendant and accordingly would be improper and unnecessary on an appeal. It is therefore necessary to examine the record very closely and scrutinize each item of evidence carefully and thus make the case somewhat smaller than it is at the present time.

It must be noted however that this cannot be done in a short time. The record is much too large and the crime [fol. 732] which the defendant has been convicted of is too serious to permit a mere hasty resume of the testimony. It is accordingly necessary that a sufficient amount of time be allotted to prepare this transcript and then further time will be necessary to secure the printing of same.

Your deponent believes that he is not asking that the appeal be prolonged indefinitely but rather that he be given a sufficient amount of time to prepare this record.

Your deponent believes that the whole record can be prepared by but not before the 29th day of June, 1934. Annexed hereto and made a part hereof is a stipulation in which the United States Attorney for the Eastern District of New York has consented to such extension.

Wherefore, your deponent respectfully requests that the time of the defendant-appellant to docket the case and file

the record thereof with the Clerk of the Circuit Court of Appeals, for the Second Circuit, be extended to the 29th day of June, 1934.

Sydney S. Snyder.

Sworn to before me this 26th day of May, 1934.

Marguerite Nill, Notary Public, Queens County. (Seal.)

[fol. 733] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO EXTENSION OF TIME TO PERFECT APPEAL

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the return date of the Citation herein, be and the same hereby is adjourned from the 28th day of May, 1934, to the 29th day of June, 1934, and that the time of the defendant-appellant to docket this case and file the record thereon with the Clerk of the Circuit Court of Appeals in the Second Circuit, be extended to the 29th day of June, 1934.

Dated: New York, May 26th, 1934.

Howard Ameli, Attorney for Plaintiff-Respondent, by Henry G. Singer, Asst. U. S. Atty. Sydney Rosenthal, Attorney for Defendant-Appellant.

[fol. 734] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING EXTENSION OF TIME TO PERFECT APPEAL—June 27, 1934

It appearing from the affidavit of Sydney S. Snyder, verified the 26th day of June, 1934, that the within case cannot be docketed and the record filed with the Clerk of the Circuit Court of Appeals, Second Circuit, prior to the 29th day of June, 1934, the date to which the return of the Citation herein was extended and from the stipulation [fol. 735] dated June 26th, 1934, that the United States Attorney for the Eastern District of New York has consented to extend the time of the defendant-appellant to docket said case and file the record thereof.

Now, upon reading and filing the said affidavit of Sydney S. Snyder, verified June 26th, 1934, and said stipulation dated June 26th, 1934, and upon motion of Sydney Rosenthal, attorney for the defendant-appellant, it is

Ordered, that the time of the defendant-appellant to docket this case and file the record thereof with the Clerk of the Circuit Court of Appeals for the Second Circuit, be and the same hereby is extended to the 6th day of August, 1934.

Marcus B. Campbell, United States District Judge.

[fol. 736] In United States District Court

[Title omitted]

Affidavit as to Extension of Time to Perfect Appeal

State of New York
County of Queens, ss:

Sydney S. Snyder, being duly sworn, deposes and says, that he is the managing attorney in the office of Sydney Rosenthal, the attorney for the defendant.

That on or about the 23rd day of March, 1934, the defendant was found guilty under an indictment charging conspiracy to violate Sections 263 and 265 of Title 18 of the United States Code.

That on or about the 28th day of March, 1934, an appeal was allowed by Hon. Marcus B. Campbell, United States District Judge. A stay was issued and a citation was [fol. 737] signed by the said Judge returnable on the 27th day of April, 1934.

That on or about the 24th day of April, 1934, an extension of time was obtained extending the time of the appellant to docket his case and file the record thereof until the 28th day of May, 1934. This extension of time was obtained since the stenographer did not and could not complete transcribing the minutes of the trial until near the end of May. These minutes consisted of six hundred and fifty typewritten pages. While it had been originally believed that it would be necessary to print the full testimony of the record, examination thereof disclosed that considerable testimony did not involve the defendant and accordingly would be improperly included in the record.

It was therefore necessary for Mr. Rosenthal to examine the record very closely and scrutinize each item of evidence to make the case considerably shorter than the minutes. This, of course, could not be done within a short time.

Mr. Rosenthal commenced working on the case immediately upon its delivery to him, but the press of actual trials and engagements, however, prevented him going very far with the matter until be became ill. During the past month he has been extremely ill and for quite some time was confined to the hospital. Immediately upon his leaving the hospital last Monday he was required to go out of town [fol. 738] where he is now recuperating. Naturally, he has not been in condition to do any work during the past month.

Since the within appeal cannot possibly be heard before the October Term of the Circuit Court, it would not seem that the plaintiff-respondent be in any respect prejudiced by a further extension of time which will enable the attorney for the defendant-appellant to prepare the record and the appeal.

Your deponent believes that this can be completed by the 6th day of August, 1934. Annexed hereto and made a part hereof is a stipulation in which the United States Attorney for the Eastern District of New York has consented to such extension.

Wherefore, your deponent respectfully requests that the time of the defendant-appellant to docket the case and file the record thereof with the Clerk of the Circuit Court of Appeals of the Second Circuit, be extended to the 6th day of August, 1934.

Sydney S. Snyder.

Sworn to before me this 26th day of June, 1934.
Jacob Robbins, Notary Public, Queens County.
(Seal.)

[fol. 739] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO EXTENSION OF TIME TO PERFECT APPEAL

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the return

date of the Citation herein, be and the same hereby is adjourned from the 29th day of June, 1934, to the 6th day of August, 1934; and that the time of the defendant-appellant to docket this case and file the record thereon with the Clerk of the Circuit Court of Appeals in the Second Circuit, be extended to the 6th day of August, 1934.

Dated: New York, June 26th, 1934.

Leo J. Hickey, Per Emanuel Bublock, Attorney for Plaintiff-Respondent. Sydney Rosenthal, Attorney for Defendant-Appellant.

[fol. 740] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING EXTENSION OF TIME TO PERFECT APPEAL—AUG. 1, 1934

It appearing from the affidavits of Sydney S. Snyder and Adolph Bruhn, both duly verified the 28th day of July, 1934, that the within case cannot be docketed and the record filed with the Clerk of the Circuit Court of Appeals, Second Circuit, prior to the 6th day of August, 1934, the return day of the citation herein, and from the affidavit of service of Jacob Robbins, duly verified the 1st day of August, 1934, that the page proof of the case on appeal herein was duly served on the United States Attorney for the Eastern District of New York, and from the stipulation dated July 28th, [fol. 741] 1934, that the United States Attorney for the Eastern District of New York has consented to extend the time of the defendant-appellant to docket said case and file the record thereof.

Now, upon reading and filing the said affidavits of Sydney S. Snyder and Adolph Bruhn, verified the 28th day of July, 1934, and the affidavit of service of Jacob Robbins, duly verified the 1st day of August, 1934, and said stipulation dated the 28th day of July, 1934, and upon motion of Sydney Rosenthal, attorney for the defendant, it is

Ordered, that the time of the defendant-appellant to docket this case and file the record thereof with the Clerk of the Circuit Court of Appeals for the Second Circuit, be and the same is hereby extended to the 25th day of August, 1934.

Marcus B. Campbell, United States District Judge.

[fol. 742] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT AS TO EXTENSION OF TIME TO PERFECT APPEAL

STATE OF NEW YORK
County of Queens, ss:

Sydney S. Snyder, being duly sworn, deposes and says, that he is the managing attorney in the office of Sydney Rosenthal, the attorney for the defendant.

That on or about the 23rd day of March, 1934, the defendant was found guilty under an indictment charging conspiracy to violate Sections 263 and 265 of Title 18 of the United States Code.

That on or about the 28th day of March, 1934 an appeal was allowed by Hon. Marcus B. Campbell, United States District Judge. A stay was issued and a citation was signed by the said Judge returnable on the 27th day of April, 1934.

[fol. 743] That on or about the 24th day of April, 1934 an extension of time was obtained extending the time of the appellant to docket his case and file the record thereof until the 28th day of May, 1934. This extension was obtained since the stenographer did not and could not complete transcribing the minutes of the trial until near the end of May. These minutes consisted of six hundred and fifty typewritten pages. While it had been originally believed that it would be necessary to print the full testimony of the record, examination thereof disclosed that considerable testimony did not involve the appellant and accordingly would be improperly included in the record. It was therefore necessary for Mr. Rosenthal to examine the record very closely and scrutinize each item of evidence to make the case considerably shorter than the minutes. This, of course, could not be done within a short time.

Mr. Rosenthal commenced working on the case immediately upon its delivery to him but the press of actual trials and engagements however prevented him going very far with the matter until he became ill. During the month of June Mr. Rosenthal was extremely ill and for quite some time was confined to the hospital. Immediately upon his leaving the hospital on June 25th, 1934, he was required to go out of town and recuperate. He was actually in no con-

dition to do any work for at least an additional month. Upon his return to active duty in the office, Mr. Rosenthal continued the preparation of the record of this case and on or about the 10th day of July, 1934, the record was sub-
[fol. 744] mitted to the Jamaica Law Printing Co. for printing.

The record herein is still very large and the printer has had considerable difficulty and has not as yet been able to complete the proof although he has advised your deponent that such proof will be in our hands in a day or so. The affidavit of Adolph Bruhn in corroboration of this is annexed hereto and made a part hereof.

Since the within appeal cannot possibly be heard before the October Term of the Circuit Court it would not seem that the plaintiff-respondent be in any respect prejudiced by a further extension of time, which will enable the attorney for the defendant-appellant to prepare the record and the appeal.

Your deponent believes that this can be completed by the 5th day of September, 1934.

Annexed hereto and made a part hereof is a stipulation in which the United States Attorney for the Eastern District of New York has consented to such extension.

Wherefore, your deponent respectfully requests that the time of the defendant-appellant to docket the case and file the record thereof with the Clerk of the Circuit Court of Appeals of the Second Circuit be extended to the 5th day of September, 1934.

Sydney S. Snyder.

Sworn to before me this 28th day of July, 1934.
Marguerite Hill, Notary Public, Queens County.

[fol. 745] In United States District Court

[Title omitted]

Affidavit as to Extension of Time to Perfect Appeal

State of New York,
County of Queens, ss:

Adolph Bruhn, being duly sworn, deposes and says, that he is a member of the partnership doing business under the

firm name and style of Jamaica Law Printing Co. maintaining a printing plant at No. 91-20 146th Street, Jamaica, Queens County, New York.

That said firm specializes in legal printing.

That on or about the 10th day of July, 1934 the office of Sydney Rosenthal delivered to your deponent the record of testimony and papers to be included in the proposed case on appeal herein.

[fol. 746] Your deponent had such a large quantity of work on hand that it is impossible for him to print this proof immediately. Your deponent also experienced a certain labor problem and difficulties which make it impossible to proceed with much dispatch in printing the record as was necessary.

At the present time the greater part of the proposed case has been set up and your deponent is certain that within a few days he will be able to submit a proof of the full record.

Adolph Bruhn.

Sworn to before me this 28th day of July, 1934.
Marguerite Nill, Notary Public, Queens County.

[fol. 747] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO EXTENSION OF TIME TO PERFECT APPEAL

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the return date of the citation herein be and the same hereby is adjourned from he 6th day of August, 1934 to the 5th day of September, 1934, and that the time of the defendant-appellant to docket this case and file the record thereof with the Clerk of the Circuit Court of Appeals in the Second Circuit, be extended to the 5th day of September, 1934.

Dated, New York, July 28th, 1934.

Leo J. Hickey, per Emanuel Bublick, Attorney for Plaintiff-Respondent. Sydney Rosenthal, Attorney for Defendant-Appellant.

[fol. 748] In United States District Court

[Title omitted]

Affidavit as to Extension of Time to Perfect Appeal

State of New York,
County of Kings, ss:

Jacob Robbins, being duly sworn, deposes and says that he is employed in the office of Sydney Rosenthal, attorney for the above named defendant-appellant; and is over the age of twenty-one.

That on the 1st day of August, 1934, at the General Post Office Building, Washington Street, Brooklyn, New York, he served the page proof of the record on appeal in the above matter, consisting of 704 pages, upon the United States Attorney, by delivering the same to and leaving it personally with Mr. Emanuel Bublick, an Assistant United States Attorney in charge of the above appeal.

Jacob Robbins.

Sworn to before me this 1st day of August, 1934.
Marguerite Nill, Notary Public, Queens County.
Certificate filed in Kings County.

[fol. 749] In United States District Court

[Title omitted.]

Stipulation as to the Record

It is hereby stipulated and agreed, that the foregoing is a true copy of the transcript of the Record in the case of United States of America against Harry Berger, as agreed upon by the parties.

Dated: New York, August 23, 1934.

Leo J. Hickey, Attorney for Plaintiff-Appellee. Sydney Rosenthal, Attorney for Defendant-Appellant.

[fol. 750] Order

Upon the above stipulation it is ordered that the foregoing printed record be filed in lieu of the original papers, for the purpose of certifying a record on appeal.

Dated: Brooklyn, N. Y., August 23, 1934.

Marcus B. Campbell, U. S. D. J.

[fol. 751] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 752] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Appellee,

against

HARRY BERGER, Appellant.

Before Manton. L. Hand and Swan, Circuit Judges

Appeal by the defendant from a judgment of conviction of the District Court for the Eastern District of New York, for conspiracy to pass counterfeit money.

Sydney Rosenthal for the appellant.
Vine H. Smith for the appellee.

L. HAND, Circuit Judge:

Berger was indicted with Jones, Katz, Rice and others for conspiring to utter counterfeit bills. A jury might have found the following facts from the evidence. Rice was an engraver, and had made the counterfeit plate from which the bills were printed; apparently he also printed them. He and Katz arranged that they should use them to buy rings which the owners advertised for sale, disposing of the rings for what they could get. In pursuance of this plan Rice gave Katz some of the money which Katz passed off upon various ring owners. Berger, a real estate agent, had heard from some woman that Katz had counter- [fol. 753] feit money to dispose of, and went to him to learn the truth of the report. Katz told him that he had and showed him a bill; but Berger did not offer to take any, being fearful of detection; instead, he introduced Jones to Katz. At a meeting between the three at the woman's apartment, Katz gave Berger four bills which Berger at once turned over to Jones. These and others Jones passed to tradesmen. All this depended chiefly upon the testimony of Katz who turned state's evidence against the rest; who had been several times convicted of other crimes; and who was a thoroughly unreliable person. However, he was corroborated as to Berger by some admissions made after Berger's arrest, and to some extent by witnesses who had seen Berger in Jones's company before Jones passed the

bills. The passing was amply proved against Jones and Rice, but each denied any connection with Katz or Berger. Thus the case against Berger was not strong, though there was enough if the jury believed the testimony. We have frequently said that we would not ordinarily intervene in an issue depending on the credibility of witnesses and there is no reason to make an exception here. We should not have felt called upon to write any opinion were it not for the following point of law. As we have said, the original arrangement was between Katz and Rice, and contemplated a limited use of the bills; that is, to buy rings. When Katz engaged Jones through the intervention of Berger, it was to pass the bills to tradesmen, and Rice knew nothing of it. Nor did Berger or Jones know that Katz was associated with Rice; though Jones was acquainted with Rice. So far as they knew, Katz might have got the bills from anyone. Thus the evidence really showed two separate conspiracies; one of Katz and Rice, the other of Katz, Berger and Jones, with no connection except [fol. 754] that Katz was a common member to both schemes, and that both concerned the utterance of the same bills. The question is whether it was error not to dismiss the case for a material variance, as Berger's attorney moved at the close of the evidence.

If an indictment lays a conspiracy against three and the evidence shows that only two are concerned, it is a variance; the conspiracy proved, whether viewed as an agreement, or more vaguely as an association, is different from that charged. But it is not regarded as a material variance, and the conviction will stand. Breese v. U. S., 203 Fed. Rep. 824 (C. C. A. 4); Hardy v. U. S., 256 Fed. Rep. 284 (C. C. A. 5); Bryant v. U. S., 257 Fed. Rep. 378 (C. C. A. 5); Harrison v. U. S., 7 Fed. (2) 259 (C. C. A. 2); McDonald v. U. S., 9 Fed. (2) 506 (C. C. A. 8); Linde v. U. S., 13 Fed. (2) 59, (C. C. A. 8); Meyers v. U. S., 36 Fed. (2) 859 (C. C. A. 3). To charge three with a single conspiracy and prove two conspiracies to which only one is a common member, is logically no worse, and may not in practice involve any greater hardship, though in effect two separate crimes are tried at one time. But it must be owned that the view in four circuits appears to be that in such a situation all the accused must be acquitted. Terry v. U. S., 7 Fed. (2) 28, (C. C. A. 9); Wyatt v. U. S., 23 Fed.

(2) 791 (C. C. A. 3); Wills v. U. S., 36 Fed. (2) 855 (C. C. A. 3); Tinsley v. U. S., 43 Fed. (2) 890 (C. C. A. 8); Marcante v. U. S., 49 Fed. (2) 726 (C. C. A. 7). Dowdy v. U. S., 46 Fed. (2) 417 (C. C. A. 4), reversed as to other defendants in 290 U. S. 371, does not involve the doctrine; when the conspiracy as laid was broken up into two conspiracies, it appeared that one of these was outside the [fol. 755] jurisdiction of the trial court, which necessarily infected any conviction upon that record. In our own decision in Siebricht v. U. S., 59 Fed. (2) 976, the indictment had laid a general conspiracy, perhaps to avoid the statute of limitations; but the evidence proved two entirely disconnected conspiracies, one of which was outlawed. Obviously a conviction would not stand on such a record.

The last two decisions are indeed good instances of how on occasion the variance may prove material, but the others do not convince that it always must be; or that in general it is a defect outside the amendment of 1919 to § 269 of the Judicial Code, (§ 391, Title 28 U. S. Code.) The materiality of a variance does not depend upon the degree of its logical perversity, but upon how far it throws confusion into the trial and makes it likely to miscarry. Does it surprise the accused by calling upon him to meet a charge for which he is not prepared? Will it allow the production of evidence not competent or material to the crime he has committed, though admissible against another defendant tried at the same time? It is such considerations as these which should determine the question, rather than the extent to which the syllogism implicit in all good pleading has been violated. This is especially true when the crime is conspiracy, where much is of necessity tolerated, that would not be allowed elsewhere; for example, the declarations of a conspirator after the conspiracy has ended, provided the jury be cautioned to use them only against the declarant, an admonition impossible to obey. It is indeed no answer to a bad practice to say that worse is tolerated already, but it is something to remember that [fol. 756] in trials for this crime the latitude is wide. At any rate we are not content to dispose of the cause by the absolute doctrine that appears to have been accepted elsewhere; we believe that the error must be such as to "affect the substantial rights of the parties". (§ 391, Title 28, U. S. C.). In the case at bar we cannot see how it could

have damaged Berger to have Rice's case tried with his. No doubt, strictly speaking, the evidence of Katz's trafficking with Rice was incompetent; but it was certainly harmless to Berger. Katz had to get the bills from someone unless he printed them himself; the fact that he got them from Rice gave no weight to his word; indeed, rather the contrary, because Rice was an added witness to his untruthfulness. His association with Rice, even if Rice was a proven counterfeiter, did not taint Berger. We can see nothing else of which Berger can complain; certainly it was no surprise to him if the conspiracy broke into two parts. And so we hold that the variance was not material, and that all could be convicted though all were not acting in concert.

Berger also complains of the conduct of the prosecuting attorney. It is indeed true that this officer failed in moderation and good taste; we might have been better content had the trial judge seen fit to keep him more closely in hand than he did. But the abuse of his position as prosecutor—for it seems to us to have been such—was not so extreme as to require us to upset the judgment. More can be said as to those questions which he put to Berger implying that Berger had made declarations to him contradictory of what he swore to on his direct. That common device is an abuse which ought to be straitly controlled, at [fol. 757] times even at the cost of a mistrial if need be. But again, it would be extravagant now to reverse the conviction on its account, for it is fantastic to suppose that it substantially determined the outcome. If it colored the whole, as perhaps it did, and as it was certainly intended to do, the shade that it added we can scarcely detect; to-day, when mere possibilities do not interest us as they did our forerunners, we demand more tangible evidence that damage has been done. Salerno v. U. S., 61 Fed. (2) 419, 424 (C. C. A. 8). The general conduct of the trial is primarily the duty of the trial judge, on whom the responsibility for the result must rest. In the case at bar we can find nothing grave enough to compromise the essential fairness of the trial.

Judgment affirmed.

[fol. 758] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. U. S. A. vs. Harry Berger. Opinion, L. Hand, C. J.

[fol. 759] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 13th day of November, one thousand nine hundred and thirty-four.

Present: Hon. Martin T. Manton, Hon. Learned Hand, Hon. Thomas W. Swan, Circuit Judges.

UNITED STATES, Plaintiff-Appellee,

vs.

HARRY BERGER, Defendant-Appellant

Appeal from the District Court of the United States for the Eastern District of New York

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

Wm. Parkin, Clerk.

[fol. 760] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. United States vs. Harry Berger. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 13, 1934. William Parkin, Clerk.

[fol. 761] UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF NEW YORK

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 759, inclusive, contain a true and complete transcript of the record and

proceedings had in said Court, in the case of United States, Plaintiff-Appellee, against Harry Berger, Defendant-Appellant, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 19th day of November, in the year of our Lord one thousand nine hundred and thirty-four, and of the Independence of the said United States the one hundred and fifty-ninth.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 762] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 7, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 39,172. U. S. Circuit Court of Appeals, Second Circuit. Term No. 544. Harry Berger, Petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed November 26, 1934. File No. 544, O. T., 1934.

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FILE COPY

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FILED
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CHARLES ELMORE

No. 544

In the Supreme Court of the United States

OCTOBER TERM, 1934

HARRY BERGER,

Defendant-Appellant,
Petitioner,

v.

THE UNITED STATES OF AMERICA,

Appellee.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

INDEX

Petition:	Page
Petition	1
Questions Presented	2
Statutes Involved	2
Statement	3
Indictment	3
The Testimony	4
Specification of Errors to be Urged	7
Reasons for Granting the Writ	7
Brief in Support of Petition:	
Opinions Below	10
Questions Presented, Statutes Involved, etc.	10
Argument	10
Conclusion	36
Appendix	37

CITATIONS

Cases:	
Boston & Albany R. R. Co. v. O'Reilly, 158 U. S. 334	35
Crawford v. United States, 212 U. S. 183	35
Deery's Lessee v. Cray, 5 Wall. 795	35
Dowdy v. United States, (C. C. A. 4) 46 F. (2d) 417, 423	14
Funk v. United States (C. C. A. 4), 46 F. (2d) 417, 423	14
Gilmer v. Higley, 110 U. S. 47	35
Graves v. United States, 150 U. S. 118	21, 34
Hall v. United States, 150 U. S. 76	21, 34
Holmgren v. United States, 217 U. S. 509	20
Johnson v. United States, 131 C. C. A. 613	34
Lilienthal v. United States, 97 U. S. 237	19
Marcante et al. v. United States, (C.C.A.10) 49 F. (2d) 156	12, 15
Moores v. Citizens' National Bank, 104 U. S. 625	35
Parnell v. United States (C. C. A. 10) 64 F (2d) 324	12
People v. Esposito, 224 N. Y. 370	21
People v. Malkin, 250 N. Y. 185	21
People v. Slover, 232 N. Y. 264	21
Potter v. United States, 155 U. S. 438	19
Smith v. Shoemaker, 17 Wall. 630	35
State v. Kardin, 2 Dev. & B. (N. C.) 407	20
Sykes v. United States, 204 Fe 909	20
Telman v. United States, (C. C. A. 10) 67 F. (2d) 716	12
Terry v. United States (C. C. A. 9) 7 F. (2d) 28	14, 15
Tinsley v. United States (C. C. A. 8) 43 Fed. (2d) 890	12
United States v. MsConnell, 285 F: 164	13
United States v. Murphy, 252 F. 404	21
United States v. Siebrecht (C. C. A. 2) 59 F. (2d) 976	15
United States v. Wills (C. C. A. 3) 36 F. (2d) 855	13
Wilson v. United States, 149 U. S. 60	21, 34
Wyatt v. United States, 23 Fed. (2d) 791	13
Miscellaneous:	
16 Corpus Juris, 1143	33
26 Ruling Case Law 1022	33
3 Wigmore, Evidence 837	33
4 Wigmore Evidence 350-372	20

In the Supreme Court of the United States

OCTOBER TERM, 1934

No.——

HARRY BERGER,

Defendant-Appellant,
Petitioner,

v.

THE UNITED STATES OF AMERICA,

Appellee.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

PETITION

HARRY BERGER, defendant-appellant, by his attorney, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Second Circuit entered in the above cause on November 13, 1934, affirming a judgment of the District Court for the Eastern District of New York.

QUESTIONS PRESENTED

1. Whether the misconduct of the prosecuting attorney permitted and condoned by the trial judge, and condemned by the circuit court below, was such a deviation from the usual trial procedure and so prejudicial to the defendant as to have deprived him of a fair and impartial trial and required a reversal of the judgment.

2. Whether corroboration of a discredited co-conspirator is necessary, and in the absence of such corroboration when the testimony is admittedly "not strong", the trial court should direct a verdict of acquittal.

3. Whether there is not a material variance requiring a reversal of conviction or a direction of acquittal when the indictment charges several with a single conspiracy and the proof tends to prove two distinct conspiracies to which only one defendant, not the petitioner, is a common member.

STATUTES INVOLVED

The statutes involved are as follows:

1. United States Code, Title 18, Section 88; which denounces conspiracies to commit offenses against the United States.

2. United States Code, Title 18, Section 263, making it a crime to falsely make, forge or counterfeit any note in imitation, or purporting to be in imitation, of circulating notes issued by any banking association authorized and acting under the laws of the United States, or to pass, utter or publish, or attempt to pass, utter or publish, any such counterfeited note.

3. United States Code, Title 18, Section 265, making it a crime, with intent to defraud, to pass, utter, etc., or to keep in possession, or conceal with intent to pass, utter, etc., any falsely made, forged, counterfeited or altered obligation or other security of the United States.

(Quoted in the appendix *infra*, pages 37-38).

STATEMENT

Judgment of conviction was rendered against the defendant Harry Berger on March 27, 1934 in the United States District Court for the Eastern District of New York, adjudging him guilty of conspiracy together with two other defendants and a third who had pleaded guilty. The defendant was sentenced to be confined in a penitentiary or prison camp for the term of one year and one day. All of the substantive counts except 7 and 8 had been dismissed by the Court and as to these two the petitioner was found "not guilty."

INDICTMENT

The indictment consisted of nine counts. The first eight charged substantive violations of Sections 263 and 265 of the United States Code, Title 18. The first six counts charged uttering and passing counterfeits of notes issued by the Federal Reserve Bank of Dallas, Texas. The seventh and eighth counts charged a like offense with reference to counterfeits of an issue of the Federal Reserve Bank of Chicago, Illinois.

The ninth count charged a conspiracy: "that the defendants did unlawfully, wilfully and corruptly combine, conspire and confederate and agree together * * * with intent to defraud, to possess and keep in their possession and conceal with intent to utter, publish, and pass the same * * * falsely made, forged and counterfeited" notes in the denominations of $20 and $100 "knowing that the said circulatory notes * * * were falsely made, forged and counterfeited, and intending then and thereby to defraud divers persons."

THE TESTIMONY

The record of the testimony is quite voluminous. Comparatively little of it involved the petitioner. The mass of it so colored the trial and the error was so constant that the entire testimony appears in this transcript. For present purposes, however, a brief resume of pertinent testimony appears sufficient.

JACK KATZ, an alleged co-conspirator who had turned State's evidence testified that he met the defendant Rice, whom he had known at Sing Sing (R. p. 137, 139). Rice told him he had an idea where they could make some money buying jewelry from people who advertised in the newspapers such jewelry for sale, paying therefor with counterfeit money (R. .p 143). He proceeded to do that (R. pp. 144-145, 166-170). He met Berger at the apartment of Miss Molnar and Miss Talle. Their first conversation was sometime in the latter part of December, before Christmas. Berger said that one of the girls told him that Katz had counterfeit money and asked to be shown the bills. Katz got one of the $100 bills and showed it to him. Berger said it looked pretty good. Before New Year's Berger introduced Jones to him. Jones asked if he could give him a few of the bills. He called Berger aside and told him he did not know the fellow and asked what type of man he was. Berger said he was O. K. and not to worry about him; Jones would never say anything. Katz spoke to Jones who said he would pass the bills in hockey games in Madison Square. He could get rid of them on the bookies there (R.pp. 158-159). The following night he came back there. Berger and the girls were also there. He gave Berger the four $100 bills as he did not want to hand them to Jones directly; Berger turned them over to Jones and Katz received $100.

Two of these bills were passed by Jones (R. pp. 54,

70-73). He admitted doing so, believing they were good. Jones testified that he had received those bills as his winnings on a bet not from Berger but from a bookmaker for whom Katz was a runner. That he had never been in the girls' apartment and had not met Katz through Berger (R. pp. 406-408).

GODBY and KETT, both secret service operatives, testified that, when first questioned, Berger had admitted taking Jones to the girls' apartment and introducing him to Katz (R. pp. 243-244, 550-551).

Katz, who was the main witness and himself the really active wrongdoer, had a record of five previous convictions.

On September 5, 1921, as Harry Katz, Atlantic City, New Jersey; larceny, sentence suspended; on September 17, 1923, as Harry J. Katz, Atlantic County, New Jersey; grand larceny, indefinite term, Rahway, New Jersey State Reformatory, as Jack Pearce in 1932, no date, Holmesburg, Pennsylvania; larceny, sentenced to one year; on April 5, 1926, as Harry Katz, Los Angeles, California; forgery, three years probation. On April 18, 1929, attempted forgery, firve years in State's prison, by Judge Rosalski.

Katz too had boasted: "I was arrested in every city but not convicted" (R. p. 173). He had received a promise from the Assistant United States Attorney that "If Katz would testify truthfully, that *I would gauge that truthfulness by his testimony heretofore given in various places* • • •" then the eight substantive counts against Katz would be dismissed and a plea to the conspiracy count would be accepted; and Katz would be protected from the other defendants (R. pp. 132 53). Thus the maximum penalty to which he would be subject was reduced from 122 years imprisonment and $50,000 fine to 2 years imprisonment and $10,000 fine (R. p. 176).

He first informed the Secret Service men that he had dealings with Berger on January 15th. This was after Berger had gone to the girls' apartment about 4 o'clock in the morning and found him there with another man (R. p. 202). He stopped being friendly with Berger the night that Berger broke into the apartment when he, the witness, was there with another man (R.p. 220). The other man opened the door after Berger had been pounding on it for a few minutes (R.p. 221). *He is not friendly with Berger and does not feel very good towards him because Berger went to the parole office with his wife and made a statement down there* (R.p. 223). *He did not deny giving a message to an attorney, to carry to Harry Berger's attorney, saying he was sorry he brought Berger into it; that he knew Berger was not guilty* and he did it because he was sore at him and thought he was fooling around with his wife (R. p. 207). Upon examination by the Court, he admitted that Commissioner O'Neil stated he was crazy (R. p. 212).

Katz had also told the bondsman after the arraignment that Berger had nothing to do with the case and was innocent (R. pp. 542, 547).

Berger denied that he had had anything to do with any counterfeit bills ever. He showed that he was in the real estate business, managing large properties, handling large sums of money for his principals and financially comfortable (R. pp. 329-330). He met Katz and the latter's wife at the girls' apartment but never had any dealings with him (R. p. 331). When he found out Katz was an ex-convict, he told her to keep Katz from the apartment (R pp. 331, 336). He never knew Katz was handling counterfeit money (R. p. 337). He never knew Jones to have been at the girls' apartment (R. p. 357) nor did he know that Katz and Jones were acquainted (R. p. 367).

Berger had known Jones because he ate at a luncheonette operated by Jones. He had tried, as broker, to aid Jones in the purchase of a concession (R. pp. 327, 337, 338).

Berger admitted that ten years before, when only twenty years old, he had pleaded guilty to a charge of robbery (R. p. 325). For the following ten years he had led an exemplary life, and nine witnesses (lawyers, brokers, an accountant and former State Senator) testified to his good reputation and character.

SPECIFICATION OF ERRORS TO BE URGED

(1) The Circuit Court erred in holding contrary to decisions of other Circuit Courts that the variance between the indictment and the proof was not material.

(2) The Circuit Court erred in holding that the misconduct of the prosecuting attorney permitted and condoned by the Trial Judge, while an abuse which should have been strictly controlled, was not prejudicial to the defendant.

(3) The Circuit Court erred in affirming a judgment based upon evidence admittedly "not strong", without proper corroboration of the testimony of the discredited and unreliable co-conspirator and where throughout the trial the prosecuting attorney had misconducted himself so as to deprive the defendant of the fair trial to which he was entitled.

REASONS FOR GRANTING THE WRIT

From the proof and as the Circuit Court below agreed, two separate conspiracies, distinct from the single one

alleged in the indictment, were proven. The court below held that immaterial. Such a stand is however contrary to the weight of authority and the holdings of five other circuits. It also appears to be inconsistent with a previous decision of the court below.

Such a variance has been held by the other courts to result in a total failure of proof of the crime charged. The lower court should then have reversed the conviction and the trial court have directed a verdict of acquittal.

It appears also that the proof adduced by the prosecution was so weak as not to satisfy the standard set by the weight of authority in criminal cases. Further while the proof was weak it came only from the lips of a discredited and concededly unreliable co-conspirator. There was a total failure of corroboration. This was an error of law which should be rectified.

The trial court in the instant case also permitted and condoned actions upon the part of the prosecuting attorney which prejudiced the defendant and prevented him from securing a fair and impartial trial. This taken into consideration with the obvious failure of proof explains the reason for the conviction of the defendant.

The course of the trial sanctioned by the Circuit Court was so contrary to the usual and proper course of trial procedure that this Court's power of supervision is petitioned to rectify the error. The injustice of permitting the judgment below to stand will appear clear. The consideration of this Court is further petitioned to make consistent the view of the Circuit Court of Appeals for the Second Circuit with that of five other circuits. These reasons have all been more fully developed and set forth in the brief annexed hereto and made a part hereof.

Wherefore it is respectfully requested that a writ of certiorari issue to the Circuit Court of Appeals for the Second Circuit for the review of the judgment of that Court.

November 23, 1934.

HARRY BERGER,

By

NATHAN D. PERLMAN,
Attorney.

BRIEF IN SUPPORT OF PETITION

OPINIONS BELOW

The United States District Court for the Eastern District of New York wrote no opinion. The Circuit Court of Appeals for the Second Circuit handed down an opinion which is annexed to the Record.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 13, 1934. The jurisdiction of this court is invoked under Section 347 (a) Title 28 United States Code (Judicial Code Section 240a as amended by the Act of February 13, 1925).

QUESTIONS PRESENTED, STATUTES INVOLVED, ETC.

A statement of the questions presented, the statutes involved, specification of errors to be urged, and a statement of the case will be found in the foregoing petition.

ARGUMENT

I.

The indictment charges an agreement among and between all of the defendants and other unknown persons to utter and pass the counterfeit notes. Katz pleaded guilty and Rice, Jones and Berger were found guilty of it. To sustain the verdict it must be considered then, that all were acting in concert. The proof discloses a different situation, however.

Katz testified to the purpose or plan: he and Rice were to buy rings from people who had advertised them in the

papers, and to pay for them with counterfeit bills (R. p. 143). That was the sole conspiracy according to the Government's main witness. Jones and Berger did not have any part.

If the facts alleged by the prosecution are considered in the light most favorable to the Government, it appears that Katz, Berger and Jones were engaged in a distinct and separate enterprise, the object of which was to permit Jones to pass some of the bills in an undetermined manner. No matter how the facts are scrutinized it is impossible to connect Rice with Berger. The evidence does not show any mutual plan or understanding between Rice and Berger, nor that their minds met to pass the bills as alleged in the indictment. True, it may be taken that conspiracy has been proven. But it becomes obvious that there must have been two conspiracies: (1) the agreement between Rice and Katz; (2) the agreement between Katz, Berger and Jones.

The Circuit Court below agreed:

> "As we have said, the original arrangement was between Katz and Rice, and contemplated a limited use of the bills; that is, to buy rings. When Katz engaged Jones through the intervention of Berger, it was to pass the bills to tradesmen, and Rice knew nothing of it. Nor did Berger or Jones know that Katz was associated with Rice; though Jones was acquainted with Rice. So far as they knew, Katz might have got the bills from anyone. Thus the evidence really showed two separate conspiracies; one of Katz and Rice, the other of Katz, Berger and Jones, with no connection except that Katz was a common member to both schemes, and that both concerned the utterance of the same bills. The question is whether it was error not to dismiss the case for a material variance, as Berger's attorney moved at the close of the evidence."

The Court held this variance not material stating:

> "• • • It is indeed no answer to a bad practice to say that worse is tolerated already, but it is something to remember that in trials for this crime the latitude is wide. At any rate we are not content to dispose of the cause by the absolute doctrine that appears to have been accepted elsewhere; we believe that the error must be such as to 'affect the substantial rights of the parties'. (Sec. 391, Title 28, U. S. C.)"

The rule is otherwise in every circuit which has passed upon the question. In fact a variance of the type here found has always been considered a failure of proof.

In *Marcante et als.* v. *U. S.* (C. C. A. 10) 49 Fed (2d) 156, 158, numerous defendants were charged with conspiracy to violate the National Prohibition Law. The Court said:

> "The difficulty is that the proof discloses nothing except one group conspiring with Irving to sell liquor in one locality; another group conspiring with Irving to manufacture liquor in another. Two conspiracies not alleged are proven, and there is no proof of the single conspiracy alleged."

The same principle was reiterated by the same Court in *Parnell* v. *U. S.* (C. C. A. 10) 64 F. (2) 324, and *Telman* v. *U. S.* (C. C. A. 10) 67 Fed. (2d) 716, 718. In the latter case, the Court distinctly said:

> "Where one large conspiracy is charged, proof of different and disconnected smaller ones will not sustain a conviction."

In *Tinsley* v. *U. S.*, 43 Fed. (2nd) 890, (C. C. A. 8), the indictment charged conspiracy to steal horses. The proof

showed that Tinsley had acted with Paul Widow and Philip Lone Eagle and that each had stolen horses pursuant to arrangement with Tinsley. The Court held that such proof disclosed two separate and distinct conspiracies and not the single conspiracy charged in the indictment; and that the verdict against Tinsley could not be sustained.

Similarly in *U. S.* v. *McConnell*, 285 F. 164, the Court said:

> "If, however, the charge of conspiracy in the indictment is merely that all the defendants had a similar general purpose in view and that each of four groups of persons were cooperating without any privity each with the other, and not towards the same common end, but toward separate ends similar in character, such a combination would not constitute a single conspiracy but several conspiracies, which not only could not be joined in one count, but not even in one indictment."

And in *United States* v. *Wills*, 36 Fed. (2nd) 855, 859, the Circuit Court of Appeals for the Third Circuit said:

> "* * * when the government by the first indictment charged one conspiracy and proved others it did more than fail to prove the conspiracy charged; it proved other conspiracies not charged and thus created a variance which was complete in the technical sense and material in the sense of the law."

The same court had well and vigorously stated in *Wyatt* v. *United States*, 23 Fed. (2d) 791:

> "Having a responsibility for the enforcement in this circuit, not only of the National Prohibition Law, but of federal laws generally, we are strongly

> of opinion that the conspiracy statute should not be stretched to cover and be misused to convict for offenses not within its terms, and that, when resorted to, the conspiracy alleged must be proved as charged. When, as here, one large conspiracy is specifically charged proof of different and disconnected smaller ones will not sustain conviction; nor will proof of crime committed by one or more of the defendants, wholly apart from and without relation to others conspiring to do the thing forbidden, sustain conviction. *Terry* v. *United States* (C. C. A.) 7 F. (2d) 28, 30; *United States* v. *McConnell* (D. C.) 285 F. 164, 166."

In *Dowdy* v. *United States*, and *Funk* v. *United States* (C. C. A. 4) 46 F. (2d) 417, 423, the indictment alleged a conspiracy between all the defendants and one Martin to violate the National Prohibition Act. The proof disclosed that Martin and Dowdy acted together and Martin and Funk worked in concert. The court held that Dowdy's conviction could not be sustained for (one reason) he was convicted of a conspiracy separate and distinct from the conspiracy charged.

Similarly in *Terry* v. *United States* (C. C. A. 9) 7 Fed. 28, it was pointed out that the proof and not the indictment is the determining factor as to the crime. While both crimes proven may come within the scope of the indictment, the broad terms of the indictment setting forth but a single conspiracy cannot be deemed to embrace the similar yet different crimes proven. "The scope of the conspiracy must be gathered from the testimony, and not from the averments of the indictment. The latter may limit the scope but cannot extend it."

Thus we see the Circuit Courts for the Third, Fourth, Eighth, Ninth and Tenth Circuits clearly opposed to the decision of the lower court herein. Strangely enough the

Court below has handed down a decision in *U. S.* v. *Siebrecht et al.* (C. C. A. 2) 59 F. (2d) 976, which is not only consistent with the rules of the other circuits but opposed to its own decision herein. True the cases may be distinguished by showing that one of the conspiracies proven in the Siebrecht case had been barred by the Statute of Limitations, but the distinction is artificial. In the within case the Circuit Court did thus attempt to reconcile its decisions, claiming that the variance was material in the Siebrecht case because of the bar of the Statute. It is interesting to note, however, that in deciding that case, the Court did not base its view of material variance upon the bar of the statute. After having shown that a single conspiracy had been alleged and two proven the Court unqualifiedly said:

> "There was, we are persuaded, a failure of proof of the single conspiracy alleged, which amounted to a fatal variance."

In no part of its opinion in that case did the Court even hint that because of the Statute of Limitations the variance was prejudicial. In fact it adopted the view of the other Circuits Courts (see *Terry* v. *United States, supra*, and *Marcante* v. *United States, supra*) that the variance results in a failure of proof when it held:

> "Thus the Court relied wholly upon a single conspiracy of which we think there was insufficient proof."

The decision of the court below on this point is therefore at variance with its own decision as well as in conflict with decisions of five other courts of even jurisdiction.

II.

The main facts in the testimony involving Berger have been set forth in the petition. They have, however, there been stated in a manner most favorable to the respondent. Still it must appear obvious that the proof against Berger was extremely weak, even if credible. The Circuit Court admitted "that the case against Berger was not strong" and that the proof "depended chiefly upon the testimony of Katz, who turned State's evidence against the rest, who had been several times convicted of other crimes, and who was a *thoroughly unreliable person.*" (Italics ours.)

Katz—the thoroughbred criminal, the man who had been arrested in every city, who had been convicted five times previously, the one really active in passing the counterfeit bills and guilty on all nine counts, the witness who admittedly bore a grudge against Berger, the squealer who furnished information to save his own hide, the guilty one who was to receive at most a sentence of two years (if he testified in a manner satisfactory to the Assistant United States Attorney), instead of a possible one hundred and twenty. He was the only real witness against this defendant.

And what was the story that he fabricated with a mind intent on revenge? That Berger had received the notes from him and at the same instant turned them over to Jones. Not that Berger was to pass the notes. Not that Berger was in any respect to profit from the transacion. Not that Berger had anything to do with counterfeit bills at any time other than to see that Jones got them.

Does it not seem ridiculous that Berger, who was attempting to forget his previous conviction by leading an exemplary life, should even touch the things? If he were to get something out of it, it might be more logical. If he was hard pressed and needed money, his connection

with such an enterprise might be understandable. But that was not his condition. His business appeared to be prosperous, both in the brokerage and management lines; he maintained an expensive car and associated with rich and prominent people. The probabilities all point to the falsity of Katz' testimony.

The only other testimony against Berger was that of Godby. He testified that Berger admitted taking Jones to the girls' apartment. But Godby is the Secret Service operative who came down from Elmira at the call of his friend on the Daily News. That there were innumerable operatives close at hand was immaterial (R. p. 245-248). The feather was to be in Godby's hat, and he left no chance of losing that feather. His testimony shows it (R. p. 266, 569-582). He seemed willing to inject anything into his testimony. His overanxiety got him into difficulty. Desirous of showing Berger to be an ex-convict, he stated Katz met Berger in Sing Sing. His embarrassment was obvious when he was shown that Berger left Sing Sing four years before Katz got there and that while Berger was in prison, Katz was in California. He resorted to feigned poor memory. But his memory of statements by Berger seemed clear—all too clear. Yet although statements were taken from every single one of the other defendants, he took none from Berger. That fact alone arouses inquiry. None of the operatives or the Assistant United States Attorney made any effort to explain that, even though it was admittedly the custom to make statements. Kett sought to come to his aid on rebuttal but his testimony cannot be considered of moment since he had failed to connect Berger on the direct case.

Yet taking their testimony at its face value, it still does not prove Berger guilty. What if he did introduce Jones to Katz? There is no proof that such introduction was

for an insidious purpose, no hint that it was to aid the perpetration of a fraud.

Opposed to this equivocal testimony and Katz' obviously false statements we can pit the testimony on behalf of the defendant. Berger and Jones categorically and unequivocally denied Katz's allegations. Both clearly showed that Berger had not introduced Jones to Katz. Jones showed the manner in which he had received the counterfeit bills. A fine array of character witnesses proved the splendid reputation Berger had developed since his conviction. Berger also showed how Katz had believed the defendant was fooling around with Mrs. Katz and started to wreak his vengeance. He showed, too, how Katz, having found out this was error, was anxious to release Berger. We do not have to accept Berger's statement on this alone. Herman Wasserberger, the bondsman, corroborated it. But, better still, is Katz's admission that he didn't feel good toward Berger, and Godby's admission that Katz had first gone to the Daily News to press alienation of affection charges before proceeding with the counterfeiting charge.

It may well be asked, "Why, if Katz had agreed to withdraw his false accusation against Berger after realizing that Berger had nothing to do with his wife, did he persist in them at the trial." The answer is all too clear. Mr. Singer said:

> "If Katz would testify truthfully, that *I would gauge that truthfulness by his testimony heretofore given in various places* • • •"

then Katz would receive certain consideration, as the dismissal of the substantive counts. The Assistant United States Attorney was out to convict as many as possible,

he did not desire to see Berger let off. Katz did not renege because he feared to renege—the extent of the consideration was at stake.

Can one then consider Katz's testimony of any value? Can one find in the combination of the testimony of Katz, Godby and Kett any proof, which, even overlooking the defense testimony, demonstrated the guilt of this defendant beyond a reasonable doubt?

Yet the law is well settled that a person accused of crime is presumed to be innocent until the contrary is proven, and that such guilt can only be shown by proof beyond a reasonable doubt.

Lilienthal v. *U. S.*, 97 U. S. 237;
Potter v. *U. S.*, 155 U. S. 438.

This Court has said (*Lillienthal* v. *U. S.*, *supra*):

> "In all cases, before a conviction can be had, the jury must be satisfied from the evidence, beyond a reasonable doubt of the affirmative of the issue presented in the accusation, that the defendant is guilty in the manner and form as charged in the indictment. *Com.* v. *McKie*, 1 Gray, 64; *Com.* v. *York*, 9 Metc., 125; *Com.* v. *Webster*, 5 Cush., 305; *Com.* v. *Eddy*, 6 *Gray*, 584; *Com.* v. *Wright*, Bep. & H., L. C. Cas., 229."

With the proof on the part of the prosecution remaining insufficient to overcome the presumption of innocence corroboration of Katz became important.

True, the early Common Law required no corroboration of the testimony of accomplices or conspirators. But the uncertainty and irresponsibility of such evidence was clear, especially where promises of immunity or favor were usually given. The general view then came to be that some corroboration was necessary. As early as 1838

we find it required in this country. (*State* v. *Kardin*, 2 Dev. & B. (N. C.) 407.) Now New York and at least half the States have enacted statutes making it imperative. The general rule seems to be that while a conviction may be sustained on the uncorroborated testimony of an accomplice, some corroboration is necessary. (4 *Wigmore on Evidence*, pp. 350-372.)

In *Holmgren* v. *U. S.*, 217 U. S. 509, 524, this Court said:

> "It is undoubtedly the better practice to caution juries agains too much reliance upon the testimony of accomplices and to require corroborating testimony before giving credence to them."

In *Sykes* v. *U. S.*, 204 F. 909, 913, the Court said:

> "It is only when the evidence is sufficient to convince of the guilt of the accused beyond a reasonable doubt that one may lawfully be convicted of a crime. • • • And the conclusion is that the uncorroborated testimony of the confessed perpetrator of a crime, contradicted under oath by herself, contradicted by other witnesses, and inspired by the hope of immunity from punishment, which in this case has since turned to glad fruition that another was an instigator or a participator in the perpetration of her crime is not only insufficient to establish his guilt beyond a reasonable doubt, but that it presents no substantial evidence of it. *Jahnke* v. *State*, 68 Neb. 154."

In the instant case, one may well look in vain for corroboration of Katz's testimony against Berger. No one, other than he, connected Berger in any respect with the counterfeit bills. That his testimony is unreliable is clear. He admitted not feeling friendly toward Berger. Three times he admitted Berger was innocent and stated that he would change his testimony accordingly. From Godby's

testimony, it seemed as if Katz was trying to charge Berger with alienation of affections. That Katz was believed crazy by the Commissioner was recognized although Katz at first denied it. That Katz had five times previously been convicted and once under an alias was admitted, although Katz at first had sought to conceal several of the convictions and had denied the alias. That Katz had been promised what must be deemed excessive consideration must be recognized. In the place of a possible sentence of one hundred and twenty years, for testifying he was to receive at best two (R. pp. 207, 212, 223, 349, 542).

Can it be believed that Katz then left the stand unshaken and unassailed? The record discloses that he was completely discredited. Certainly then corroboration became not merely a cautious aid to the jury but an actual necessity. *United States* v. *Murphy*, 252 Fed. 404.

Failing corroboration there was a failure of proof and it became the duty of the trial court to direct a verdict of acquittal.

III.

Our system of jurisprudence has maintained one proposition as the beacon of our enlightenment—that a defendant accused of crime is entitled to a fair and impartial trial. This has been scrupulously maintained by our appellate courts when individuals, always human, have by attack on public welfare become blinded to justice by the desire for vengeance in the name of public interest.

Graves v. *U. S.*, 150 U. S. 118;
Wilson v. *U. S.*, 149 U. S. 60;
Hall v. *U. S.*, 150 U. S. 76;
People v. *Slover*, 232 N. Y. 264;
People v. *Esposito*, 224 N. Y. 370;
People v. *Malkin*, 250 N. Y. 185.

That the prosecuting attorney in any case has much to do with the manner of conduct of the trial and that he can influence the atmosphere of such a trial is clear. That there is a burden upon the District Attorney as a quasi-judicial officer to aid and maintain the proper judicial atmosphere and in doing so to prosecute the defendant solely on the facts of the case and by legitimate methods is well recognized. Improper questions, statements not based upon evidence, brow-beating of witnesses and excessive argumentativeness is forbidden. All these are prohibited because they tend to distract the minds of the jurors from the actual facts and real issues and create against the defendant a prejudice born of the fact that the District Attorney is recognized as a public officer who has apparently no interest in the case and who is at heart an altruist and interested solely in obtaining justice.

A study of the record in the instant case discloses that this defendant did not receive the fair and impartial trial to which every defendant is entitled. It also discloses that the prosecuting attorney went beyond the limits of non-partisanship and impartiality and attacked the defendant and the case with the virulence and venom of the nearly barbaric advocate who tilted in the lists for the case of his principal. But the age of defenders and trials by combat has long since gone. Our civilization at least in its Penal Law and procedure prides itself on having through evolution completely annihilated primativeness and barbarity. Yet occasionally, as here, our consciousness of civilization is pricked by ugly throw-backs.

Almost at the outset of the trial the Assistant United States Attorney makes clear his disposition. After an objection had been made he stated:

> "I do not mind your objecting but if it is an act to disconcert this witness you won't get away very long." (R. p. 151.)

His quarrelling with counsel for the defense at the time is not only ludicrous but actually scandalous. That the austere and dignified atmosphere of the court must have been disturbed by such actions is obvious (R. pp. 172, 219-220, 222-223). His attitude is well displayed by this (R. p. 248):

> "Q. So you have the whole picture before you as he painted it for you?
>
> Mr. Singer: He did not paint anything. Stop the picture talk.
>
> The Court: Go ahead.
>
> Mr. Kamber: I withdraw the word 'paint'.
>
> The Court: You had better ask the question without the word 'paint'.
>
> Q. So he told you this entire story and you took it in for all it was worth?
>
> Mr. Singer: Let us not have any of that either.
>
> The Court: I will let that go."

And a short time later after a question had been asked and objection made defense counsel offered to withdraw the inquiry to save time; the Assistant United States Attorney replied:

> "Do not save time, save yourself" (R. p. 249).

And later:

> "Q. Did you tell this ex-convict——
>
> Mr. Singer: Let us not have that.
>
> The Court: We are talking about Katz.
>
> Mr. Singer: He is not the only ex-convict" (R. p. 249)."

Jones' cross-examination (R. pp. 410-418) consists of one long argument between the Assistant United States Attorney and that defendant.

Cross-examination of the defendant Rice too (R. pp. 514-538) gave the Assistant United States Attorney further opportunity to display his argumentativeness.

And during the defendant Berger's direct examination Mr. Singer continued his habit of interrupting:

> "Q. You have an automobile? A. A twenty-five hundred dollar car.
>
> Mr. Singer: That is a new defense. You do not need money.
>
> The Court: He can show the whole situation.
>
> Mr. Singer: That is a new defense." (R. p. 329.)
>
> "Mr. Singer: What is that?
>
> Mr. Wegman: Never mind; I consent that it be stricken out.
>
> Mr. Singer: Never mind about striking that out. Let him go and tell how I know her; let us hear about it.
>
> The Court: What has that to do with Mr. Singer?
>
> . . . . . .
>
> Mr. Singer: Is that all? I thought I was in that apartment with the gun.
>
> Mr. Wegman: There has been no suggestion of that altogether, and you know it.
>
> Mr. Singer: There might have been."
>
> (R. pp. 340, 342.)

The persistent unfairness of the Assistant United States Attorney is clear on the cross-examination of the defendant Berger. Right at the beginning he purposely mis-states the defendant's testimony:

> "Q. The man who didn't have his pants on and was running around the apartment he wasn't there? A. No, Mr. Singer. Mr. Godby told me about it, if you want it, I will tell you, he told me 'If you give this man's name out, I will give you the works.'

Q. Give me the works? A. No, sir. Godby told me that.

Q. You are going to give me the works? A. Mr. Singer, you are a gentleman, I have got nothing against you. You are doing your duty.

Mr. Wegman: You are not going to give Mr. Singer the works. Apparently Mr. Singer misunderstands you. Who made that statement?

The Witness: Mr. Godby says that.

Q. Wait a minute. Are you going to give me the works? A. Mr. Singer you are absolutely a gentleman, in my opinion, you are doing your duty here.

Q. Thank you very much. But I am only asking you are you going to give me the works? A. I do not give anybody such things, I never said it.

'Q. All right. Then do not make the statement." (R. p. 350.)

His brow-beating of the defendant is seen throughout the case:

"Q. I wasn't in that apartment, was I? A. No, Mr. Singer.

Q. I didn't pull the gun on you and stick you up against the wall? A. No.

Q. I wasn't up in this apartment at any time, as far as you know, was I? A. As far as I know, you weren't.

Q. You might have an idea that I may have been there? A. No, I should say not.

Q. I just want to get that part of it straight." (R. p. 351.)

And then concerning the defendant's pistol permit:

"Q. In this renewal for 1933 you had stricken out the fact that you wanted it on the premises but you wanted to carry it in your pocket? A. That is not true.

* * * * * * * *

Q. I did it I suppose? A. I didn't say you done it Mr. Singer.

Q. I thought you did it, so here somebody was framed again? A. * * *" .

(R. p. 380.)

Concerning a matter that had absolutely nothing to do with the defendant and the trial, the prosecutor was permitted to cross-examine the defendant viciously in what takes up six full pages of the record (R. pp. 382-388), as to whether or not Mr. Singer had given Miss Wishnu his telephone number, as to the reason for his having done that, and as to whether or not Miss Wishnu had any connection with this case or whether she had been let off by Mr. Singer.

The Assistant United States Attorney also unfairly and unnecessarily went into great detail concerning the relations of the defendant and Miss Talle, as to what he did at her apartment, how often he stayed there, whether he slept there over night, whether he had a right to indulge in what he did, and whether it degraded him. Clearly such facts had no bearing upon the issues of the case or upon the credibility of the defendant (R. pp. 364-368).

The defendant had testified to making an effort to find out the name of the man who with Katz had been at the girls' apartment the night when Berger went there. Then the Assistant United States Attorney asked the defendant if Mr. Godby, the secret service operative, had been in the apartment. The defendant knew he had. He then asked:

"Q. You do not claim Mr. Godby had anything to do with those girls, do you?"

He then asked the same question concerning Agent Fitzgerald. The defendant insisted he couldn't swear for anybody else. The Assistant United States Attorney still persisted on the point:

> "Q. Do you include as those who may have been there, the Court and all the jurymen, and your own counsel?"

Defendant's attorney interfered, but the Court stated:

> "I am not going to stop him because the question includes the Court. I will let him answer it."

The predicament of the defendant is clear. His answer was obvious: "I should say not, that is ridiculous." But counsel would not leave that alone and insisted on following it up:

> "Q. It is ridiulous to include the Court, and the jury and your own counsel but it is perfectly feasible to include Mr. Fitzgerald, and Mr. Godby and myself. That is your answer, that is all. A. No."

Right thereafter the Court repeated to the jury:

> "He has answered that question, that it is none of you." (R. pp. 391-393.)

At the end of this defendant's cross-examination the following took place:

> "Q. Now, Mr. Berger, do you remember yesterday when the court recessed for a few minutes and you saw me out in the hall; do you remember that?
> A. I do, Mr. Singer.
> Q. You talked to me out in the hall? A. I talked to you?
> Q. Yes? A. No.

Q. *You say you didn't say to me out in the hall yesterday, 'You wait until I take the stand and I will take careof you'? You didn't say that yesterday?* A. No; I didn't, Mr. Singer, you are lying.

Q. I am lying, you are right. You didn't say that at all? A. No.

Q. You didn't speak to me out in the hall? A. I never did speak to you outside since this case started, except the day I was in your office, when you questioned me.

Q. I said yesterday. A. No, Mr. Singer.

Q. Do you mean that seriously? A. I said no.

Q That never happened? A. No, Mr. Singer, it did not.

Q. You did not say that to me? A. I did not. What do you want me to answer you?

Q. *I want you to tell me I am lying, is that so?*

A. I told you that once.

Q. No question about that at all?. A. No question about that." (R. pp. 393-394.)

The Assistant United States Attorney's propensity for making statements injurious to the defendant and actually inadmissible in the guise of questions, is clear from the following:

"Q. Didn't you tell me, Mr. Wasserberger, and I am sorry you brought this up, but as you took the stand you are going to be bound by it, *didn't you tell me that the only reason that you wanted to get those girls out for Berger was because you felt if you could get them out on bail they would not say anything about Berger?*" (R. p. 544.)

During the defendant's cross-examination too the Assistant United States Attorney, although there was no evidence to that effect, asked the following questions:

"Q. You never told us about the time Jones and you came up to the girls' apartment?"

And then followed it up:

> "Q. *Didn't you tell me you brought Jones up there?*"
> "Q. *I am lying?* • • •
> Q. *Do you say now that you never told me?*" (R. p. 357.)

And later on:

> "Q. Didnt' you tell me up at the District Attorney's Office that it was your girl friend, Miss Siegel or Talle who had informed the police that you had a pistol permit and you had a criminal record!" (R. p. 362.)

It will be noted that in spite of all this no statement of this defendant was offered in evidence, for he did not make any such statement, and Mr. Singer did at no time attempt to take the stand to testify as to the conversations he had with this defendant.

In his summation, counsel for the Government, continued in the same manner in which he had persisted throughout the examination of witnesses. He opened with a malicious attack on defense counsel (R. pp. 614-616). Then he, again, proceeded to inject statements of alleged fact which were not in evidence: "he seems to forget too that this man was arrested long before he ever heard of this lawyer • • •" (R. p. 618). He proceeds to accuse Berger, without foundation in evidence, of leading a dual existence, of having fooled his friends and asserting that the character witnesses knew nothing about this defendant (R. p. 621):

> "But no, each and every single character witness called here testified that they didn't know anything about Berger, because Berger, just like the last

man, Rice, was leading a complete double life, Dr. Jekyll and Mr. Hyde, in the flesh before you, the two of them.

* * * * * * * * *

"Well, that is a part of his nature, that is a part of his life, to attempt to fool his own friends, and that is what the testimony shows here."

"Well, if they were (his social intimates) he certainly fooled them, and I know he won't fool you. That is the point, you see. Every argument must come back to the one point. He fooled his friends, and they all said so. Is he going to fool any one of you?"

Mr. Wegman: Now, if your Honor please, I ask that the District Attorney be instructed to correct that mis-statement of fact.

The Court: I do not think that kind of interruption should be made. This is argument, he is not stating the evidence. If you have any exceptions, you can take them at the close of the argument.

Mr. Wegman: There is no evidence that he fooled any of his friends.

The Court: Go ahead.

Mr. Singer: I say to you again that he fooled those friends. Not a single one of them knew about him, because if they knew what he was doing over there at West 57th Street, if they knew of his association with these thieves, the men that Kamber called thieves, the man that his own lawyer called a rat, do you think that these honorable men would have come here and given testimonials as to his good character? *You have got the right to assume, you have got the right to think that he fooled them,* and to say to yourselves, 'This baby won't kid me.'"

Then still more savagely, having repeated the incidents of the notary and pistol permit applications, he repeats with each breath the word "liar" and ends:

"And if what his own lawyer says is true, if a man lies in one matter he may lie in everything so throw out everything he says, and *throw Berger at last where he really belongs.*"

Although Berger had no connection with the passing of the bill on Mrs. Goldstein, and all the Government witnesses so agreed, Mr. Singer attacked her, his own witnes, in an effort further to prejudice Berger, and into his argument again injected his alleged personal knowledge:

"Mrs. Goldie Goldstein takes the stand. She says she knows Jones, and you can bet your bottom dollar she knew Berger. She stood right where I am now and looked at him and was afraid to go over there, and when I waved my arm everybody started to holler, 'Don't point at him.' You know the rules of law. Well, it is the most complicated game in the world. I was examining a woman that *I knew knew Berger and could identify him*, she was standing right here looking at him, and I couldn't say, "Isn't that the man?' Now, imagine that. But that is the rules of the game, and I have to play within those rules."

. . . . . .

"Now, she finally got to see Berger, somebody had to almost pick him up and throw him in her lap——

Mr. Wegman: If your Honor please, I have got to object to this. I object to counsel——

The Court: Mr. Singer, nobody picked him up and nobody put him in her lap.

Mr. Singer: I didn't say that.

Mr. Wegman: It is unfair to state that.

Mr. Singer: 'Stand up,' said I, and when he stood up she said, 'Yes,' and then tried to explain it, explain the reason why she had failed to identify him before. She said, 'Well, it looks like there was something different about him now and then.'

From that time on everybody was laughing when the statement was made, 'Did he have a moustache?' Nonsense! She knew him when she took the stand. *You must remember, Jones had been to see her after he had been released. Remember, you are not dealing with a lot of ignorant school children.* Isn't it peculiar that she couldn't identify him when she was over there? Doesn't that sound ridiculous to you? Use your brains, and you can find out what was behind the failure to identify him. *They weren't slipping anything over on me. I knew before the case was over she would pick him out or be a sorry lady.*"

* * * * * * *

"It was a pretty tough break that she had to identify Jones, and if she could have avoided it I believe she would have, and *she tried to avoid identifying Berger*——

Mr. Wegman: I object to that.

Mr. Singer: (Continuing)—but her luck didn't hold out.

Mr. Wegman: I object to that."

* * * * * * *

"Mr. Singer: Gentlemen, you make your own minds up as to why she couldn't identify him at first, and I won't attempt to encroach at all on your own opinion."

Among other facts not in evidence we not the Assistant United States Attorney saying:

"*Oh, you have his good pal Berger, who was not only taking care of him in a business way, but also was taking care of him up at this apartment where there were some ladies of pleasure.*"

What more than this did the jurors need to hear from a quasi-judicial officer before convicting:

"It (reasonable doubt) means, 'I got a conscience, I got a job, I am on the jury and I swore an oath to be a good, honest juror. Am I satisfied in my mind that these men committed a crime? If I am I will convict them; and that is your reasonable doubt. Of course, if you didn't want to take the job as jurors you should have refused and said, 'I do not have the heart, I do not have the moral fibre or strength to judge my fellow man. I would rather duck the issue and leave it for somebody else!' But *you took the job, and I am going to hold you strictly accountable to your oath.*"

A summary finds that the Assistant United States Attorney in his zeal was guilty of almost every act of misconduct which has many times been proclaimed error:

"Altercations between counsel, including imputation as to veracity, interjection of prejudicial matter by way of remarks during the trial, asking incompetent questions, merely for purpose of prejudice, the improper browbeating of witnesses, * * * improper argument to the jury." 26 Ruling Case Law 1022.

"Persistence of the prosecuting attorney in asking improper questions in order to prejudice the jury may amount to such misconduct as to require a new trial." (Citing:) *State* vs. *Greenland,* 125 Iowa 141; *Baldwin* vs. *State,* 11 Oklahoma Criminal Reports 228; *State* v. *Roscon,* 119 Iowa 300 Corpus Juris, Vol. 16, p. 1143.

"A counsel's argument is in its purpose a connected presentation of the facts supposed to have been proved by the evidence tending in favor of his client. * * * Any representation of fact, therefore, which is made by him in the argument, must not be an assertion made upon his own credit * * * To bring forward in argument an assertion of fact * * * is to become a witness; and to be a witness without being subjected to cross-examination is to violate the fundamental principle of the Hearsay rule." 3 Wigmore Evid. 837.

> "The same gentral principle governs the putting of questions to witnesses The jury may under certain circumstances obtain an impression, from the mere putting of illegal questions which are either answered in the negative or are not answered because illegal and excluded, that there is some basis of truth for the question." *Id.* 850.

That the misconduct of counsel for the prosecution during the trial prejudiced the defendant and his case so as to deprive him of a fair and impartial trial is clear. *Johnson* v. *U. S.*, 131 C. C. A. 613, 3 Wigmore Evid. Sec. 1808; *Graves* v. *U. S., supra*, *Hall* v. *U. S. supra*, *Wilson* v. *U. S., supra.*

Upon these matters the court below in its opinion said:

> "It is indeed true that this officer failed in moderation and good taste, we might have been better content had, the trial judge seen fit to keep him more closely in hand than he did."

It termed the actions of the prosecutor an "abuse of his position". It further said:

> "More can be said as to these questions which he put to Berger implying that Berger had made declarations to him, contradictory of what he swore to on his direct. That common device is an abuse which ought to be strictly controlled at times even at the cost of a mistrial if need be. But again, it would be extravagant now to reverse the conviction on its account, for it is fantastic to suppose that it substantially determined the outcome. If it colored the whole as perhaps it did, and as it was certainly intended to do, the shade that it added we can scarcely detect, today when mere possibilities do not interest us as they did our forerunners; we demand more tangible evidence that damage has been done."

With the proof against the defendant admittedly so weak, the actions of the prosecutor became important. It hardly seems credible that the conviction would be based on the facts. The only proper conclusion is that the attitude of the Assistant United States Attorney and the atmosphere he created aroused prejudice against the defendant, resulting in the verdict.

The presumption is that error produces prejudice, and it is only when the fact so clearly appears that an error challenged did not prejudice and could not have prejudiced, the complaining party, that the rule that error without prejudice is no ground for reversal is applicable. *Smith* v. *Shoemaker*, 17 Wall. 630, 639; *Deery's Lessee* v. *Cray*, 5 Wall. 795; *Moores* v. *Citizens' National Bank of Piqua*, 104 U. S. 625, 630; *Gilmer* v. *Higley*, 110 U. S. 47; *Boston & Albany R. R. Co.* v. *O'Reilly*, 158 U. S. 334; *Crawford* v. *United States*, 212 U. S. 183.

The view of the Circuit Court below is thus contrary to the rulings of this Court and the evident weight of authority. Further, by its decision, the court below has sanctioned such a departure from the usual and proper course of procedure as to call for the exercise of this court's power of supervision.

CONCLUSION

It is submitted that the decision of the Circuit Court was erroneous in determining the within case in a manner in conflict with decisions of other Circuit Courts and the weight of authority; in condoning the departure from the usual and proper course of trial procedure. The decision is grossly and manifestly unfair and improper and calls for the exercise of this Court's power of supervision.

November 23, 1934.

Respectfully submitted,

NATHAN D. PERLMAN,
Attorney for Petitioner,
Defendant-Appellant.
Office and P. O. Address,
475 - 5th Avenue,
New York City, N. Y.

Of counsel,
SYDNEY ROSENTHAL,
and
SYDNEY S. SNYDER,
(Both of 10 Court Square,
Long Island City, N. Y.)

APPENDIX

Section 88 (Criminal Code, Secton 37) Conspiring to Commit Offense Against United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both. (R. S. Sec. 5440; May 17, 1879, c. 8, 21 Stat. 4; Mar. 4, 1929, c. 321, Sec. 37, 35 Stat. 1096.)

Section 263 (Criminal Code, Section 149) Counterfeiting National Bank Notes

Whoever shall falsely make, forge, or counterfeit, or cause to procure or be made, forged or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be in imitation of the circulating notes issued by any banking association now or hereafter authorized and acting under the laws of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish, any false, forged, or counterfeited note, purporting to be issued by any such association doing a banking business knowing the same to be falsely made, forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering, any such circulating notes, or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered or spurious circulat-

ing note issued, or purporting to have been issued, by any such banking association, knowing the same to be falsely altered or spurious, shall be fined not more than $1,000 and imprisoned not more than fifteen years. (R. S. 5415; Mar. 4, 1909, c. 321, Sec. 149, 35 Stat. 1115.)

SECTION 265 (CRIMINAL CODE, SECTION 151) UTTERING FORGED OBLIGATIONS

Whoever, with intent to defraud, shall pass, utter, publish, or sell or attempt to pass, utter, publish, or sell or shall bring into the United States or any place subject to the jurisdiction thereof, with intent to pass, publish, utter, or sell, or shall keep in possession or conceal with like intent, any falsely made, forged, counterfeited or altered obligation or other security of the United States, shall be fined not more than $5,000 and imprisoned not more than fifteen years. (R. S. Sec. 5431; Mar. 4, 1909, c. 321, Sec. 151, 35 Stat. 1116.)

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No. 544

In the Supreme Court of the United States

OCTOBER TERM, 1934

HARRY BERGER,

Petitioner

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR THE PETITIONER IN REPLY

INDEX

Petition:

	Page
Statement	1
Argument	4
Conclusion	6

CITATIONS

Cases:

Bates v. Coe, 98 U. S. 31	6
Cudahy Packing Co. v. City of Omaha, 24 F. (2d) 3, 7 (C. C. A. 8)	5
Davis v. Patrick, 122 U. S. 138	5
Duignan v. United States, 274 U. S. 195	5
Evans v. Stettnisch, 149 U. S. 605	6
Ex parte Chateaugay Ore & Iron Co., 128 U. S. 544	6
Hume v. Bowie, 148 U. S. 245	6
Jennings v. Philadelphia etc. Railway Company, 218 U. S. 255	5
Johnson v. United States, 225 U. S. 405	6
Reliable Incubator & Brooder Company v. Stahl (C. C. A. 7) 102 Fed. 590, 593	4
Roberts v. Reilly, 116 U. S. 80, 93	5
Taylor v. U. S., 286 U. S. 1	6
U. S. v. Breitling, 20 How. 252	6
Waldron v. Waldron, 156 U. S. 361, 378	4
Western Dredging & Imp. Co. v. Heldmaier, 116 F. 179 (C. C. A. 7)	5

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STATEMENT

This brief is submitted in reply to a point raised by the respondent in his brief in opposition. The principal points, questions and opinions have been set forth in the petitioner's brief.

ARGUMENT

The respondent has raised the question whether the bill of exceptions was signed and filed in time. Sentence

was imposed on the defendant on March 27, 1934. The bill of exceptions was settled and filed on August 23, 1934. Stipulations were from time to time entered into between the United States Attorney and counsel for the appellant extending the time to "docket this case and file the record" (R. 727, 733, 739, 747). Each stipulation was accompanied by an affidavit of counsel for the appellant (R. 724, 730, 736, 742). Upon these, orders were entered so extending the time (R. 722, 728, 734, 740). The order used was based upon a form furnished by the United States Attorney.

It is true that the orders and stipulations do not use the words "Bill of Exceptions." Yet it is obvious that the intent was that the extension of time embrace both the common law "Record" and the "Bill of Exceptions." In counsel's affidavits reference is first made to the stenographer's minutes (R. 725) which, of course, are essential only to the preparation of a Bill of Exceptions and not a mere Record. Reference is also made to the time needed for preparation of what in effect would be a Bill of Exceptions (R. 725, 731, 733 737, 743).

The intent is also borne out by the telegram of the United States Attorney (Brief for the United States in opposition, Appendix p. 15). He admits assuming that the "order extending time to file record includes filing bill of exceptions."

What should, however, be conclusive is the stipulation settling the Bill of Exceptions (R. 702). Therein it was agreed "That same (the true transcript of the record and evidence) has been prepared *within the time allowed by law and the Court;* and that it may be settled and ordered on file as the Bill of Exceptions herein." (Italics ours.)

The whole difficulty rests upon a question of termin-

ology. The United States Attorney and counsel for the appellant used the word *case* and *record* in the stipulations and orders in the statutory and not the common law sense. Under the New York practice and usage the *case* or *record* embraces everything which must be presented to the appellate court. Locally, the words are, and in the instant case, have been loosely used. The common law *record* prepared by the clerk is clearly different.

It must further be obvious to the court that counsel did not err severely when they failed to use the term bill of exceptions explicitly. "A bill of exceptions is a formal statement in writing of the exceptions duly taken at the trial to the rulings and instructions of the court, with as much of the testimony as is necessary to enable the appellate court to determine whether error was committed in respect to the particular rulings or instructions as to which the exceptions are taken." Zoline's Federal Appellate Jurisdiction and Procedure 3rd Ed. p. 303. It is entirely artificial and the product of counsel. In the instant case, such was not prepared, for the full record of the testimony at the trial has been made the bill of exceptions (R. 702).

In any event, no objection to the settlement and filing of the bill of exceptions was made by the respondent to the District Court. Such settlement proceeded entirely upon an expressed consent. Nor was the question raised in the Circuit Court. Now, when appellant seeks a review in this court, of what appears to be a manifest injustice, the question is raised for the first time. By consenting to the settlement of the Bill of Exceptions (R. 702) and to the filing of the transcript in its present form (R. 749) respondent must be deemed to be estopped from

denying its validity or in any event to have waived any possible objection.

As Mr. Justice White said for this Court in *Waldron* v. *Waldron*, 156 U. S. 361, 378:

> "The motion to dismiss or affirm is without merit. The signing of the bill of exceptions after the expiration of the term at which the judgment was rendered, was lawful if done by consent of parties given during that term. *Hunnicut* v. *Peyton*, 102 U. S. 333 (26:113); *Davis* v. *Patrick*, 122 U. S. 138 (30: 1090); *Michigan Ins. Bank* v. *Eldred*, 143 U. S. 293 (36: 162).
>
> The fact that the bill of exceptions was not handed to counsel for defendant on or before November 15, 1890, does not appear of record, and if it did, *it would be rendered immaterial by the action of the judge below in settling the bill.*
>
> If the bill was not delivered to counsel within the time fixed by the agreement, objection to the failure so to deliver it should have been urged when the bill was settled."
>
> "As to the contention that the appeal was docketed too late, the defendant in error is precluded from relying thereon by reason of his motion here for a new bond, long after the entry of the case on the docket of this court, which was made at the return term."

The waiver of the respondent in the stipulation is clear. (R. 702). Such waiver appears as was approved in *Reliable Incubator & Brooder Company* v. *Stahl* (C. C. A. 7) 102 Fed. 590, 593, where the Court prescribed:

> "* * * or if a waiver of the time is to be asserted, a distinct statement of the fact of consent of counsel * * * or still better, a written agreement indorsed upon or attached to the bill showing that consent."

In *Jennings* v. *Philadelphia etc. Railway Company*, 218 U. S. 255, this Court indicated that such consent as in the case at bar would be sufficient to destroy objections to the record where the bill of exceptions had been settled beyond the term. ("There should be express consent, or conduct which should equitably estop the opposite party from denying that he had consented.")

It must be conceded that the question now presented has not been raised before in this case. Objection should first have been made in the trial court. Not having made it there, the respondent had a second opportunity in the Circuit Court, but failed to take advantage of such opportunity. This Court should not consider objections not pressed or passed upon below. *Duignan* v. *United States*, 274 U. S. 195; *Roberts* v. *Reilly*, 116 U. S. 80, 93.

Aside from the impropriety of now raising this question, the circumstances of this case require that the objection be dismissed. This case deals not merely with the funds and property of litigants but with the liberty and person of a human being. He is threatened with imprisonment based solely upon errors heretofore assigned. In dealing with the liberty of human beings substantial justice is certainly never effected by the assertion of a technical objection to prevent adjudication on the merits. At any rate the defendant was permitted to go to the expense and effort of printing and preparing a voluminous record; to draw a brief and argue the case in the Circuit Court, and then to prosecute this application here. The silence and written consent of the respondent cannot be avoided. Such at least compel this case to be taken out of the harsh general rule.

Cudahy Packing Co. v. *City of Omaha*, 24 F. (2d) 3, 7 (C. C. A. 8);
Davis v. *Patrick*, 122 U. S. 138;
Western Dredging & Imp. Co. v. *Heldmaier*, 116 F. 179 (C. C. A. 7);

U. S. v. *Breitling*, 20 How. 252;
Hume v. *Bowie*, 148 U. S. 245;
Taylor v. *U. S.*, 286 U. S. 1;
Ex Parte Chauteaugay Ore & Iron Co., 128 U. S. 544.

Further, the technical objection raised by the respondent may be opposed by another technicality. Respondent says the Bill of Exceptions was not signed and filed in time. The record says otherwise (R. 702). Nothing in the record disputes this. Respondent relies upon an appendix to its brief. That is clearly improper. The Court cannot consider any facts not presented in the record. The record imports absolute verity and cannot be contradicted by a statement or even an affidavit which counsel files in the cause. *Johnson* v. *United States*, 225 U. S. 405; *Evans* v. *Stettinich*, 149 U. S. 605; *Bates* v. *Coe*, 98 U. S. 31.

CONCLUSION

For the reasons herein stated, the technical objection of the respondent should be given no weight, and for the reasons hereinbefore submitted, the writ of certiorari should be granted.

December, 1934.

Respectfully submitted,

NATHAN D. PERLMAN,
Attorney.

Of counsel:
SYDNEY ROSENTHAL
SYDNEY S. SNYDER.

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BRIEF FOR THE APPELLANT

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Statement	1
A.—The Indictment	2
B—The Testimony	2
Specification of Errors	3
Argument	6
Summary	7
I.	7
II.	8
III.	18
Conclusion	24
Appendix:	38
Statutes	40
Testimony	42

CITATIONS

Cases:	
Boston & Albany R. R. Co. v. O'Reilly, 158 U. S. 334	38
Caminetti v. U. S., 242 U. S. 470	21
Crawford v. United States, 212 U. S. 183	38
Deery's Lessee v. Cray, 5 Wall. 795	38
Dowdy v. United States (C. C. A. 4) 46 F. (2d) 417, 423	11
Funk v. United States (C. C. A. 4), 46 F. (2d) 417, 423	11
Gilmer v. Higley, 110 U. S. 47	38
Graves v. United States, 150 U. S. 118	24, 37
Hall v. United States, 150 U. S. 76	24, 37
Heyman v. Reg. 8 Q. B. 102, 28 L. T. N. S. 162, 21 W. R. 357, 12 Cox, C. C. 383, 8 Eng. Rul. Cas. 126	13
Holmgren v. United States, 217 U. S. 509	22
Johnson v. United States, 131 C. C. A. 613	37
Lilienthal v. United States, 97 U. S. 237	21, 22
Marcante et al. v. United States, (C. C. A. 10) 49 F. (2d) 156	9, 13
Moores v. Citizens' National Bank, 104 U. S. 625	38
O'Connell et als. v. Reg. (1844), 11 Cl. and Fin. 155, 3 L. T. O.,S. 429, 9 Jur. 25, 1 Cox. C. C. 413, 8 E. R. 1061	17
Parnell v. United States (C. C. A. 10) 64 F (2d) 234	10
People v. Esposito, 224 N. Y. 370	24
People v. Malkin, 250 N. Y. 185	24
People v. Slover, 232 N. Y. 264	24
Pettibone v. U. S., 148 U. S. 197	13
Potter v. United States, 155 U. S. 438	21
Reg. v. Kenrick, 5 Q. B. (Eng.) 49, Dav. & M. 208, 12 L. J. Mag. Cas. N. S. 135, 7 Jur. 848	13
Reg. v. Manning (1883) 12 Q. B. D. 241	18
Reg. v. Quinn (1898) 19 Cox C. C. 78	18
Smith v. Shoemaker, 17 Wall. 630	38
State v. Kardin, 2 Dev. & B. (N. C.) 407	22
Sykes v. Barraclough (1904) 2 K. B. 675	18
Sykes v. United States, 204 F. 909	22
Telman v. United States (C. C. A. 10) 67 F. (2d) 716	10
Terry v. United States (C. C. A. 9) 7 F. (2d) 28	12,
Tinsley v. United States (C. C. A. 8) 43 Fed. (2d) 890	1
United States v. McConnell 285 F. 164	10
United States v. Murphy, 252 F. 404	2
United States v. Siebrecht (C. C. A. 2) 59 F. (2d) 976	12
United States v. Wills (C. C. A. 3) 36 F. (2d) 855	1
Wilson v. United States, 149 U. S. 60	24, 37
Wyatt v. United States (C. C. A. 3) 23 Fed. (2d) 791	11
Miscellaneous:	
16 Corpus Juris, 1143	36
26 Ruling Case Law 1022	36
3 Wigmore Evidence 837, 850	37
4 Wigmore Evidence 350-372	2

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 544

HARRY BERGER,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The trial court's charge to the jury appears at R. 656-695. Otherwise, the United States District Court for the Eastern District of New York wrote no opinion.

The opinion of the Circuit Court of Appeals for the Second Circuit (R. 752-755) has not yet been officially reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 13, 1934 (R. 756). Jurisdiction of this Court was invoked under Section 347 (a) of Title 28, United States Code (Judicial Code, Section 240 as

amended by the Act of February 13, 1925). The petition for a writ of certiorari was filed in this Court on November 26, 1934. A writ of certiorari issued out of this Court to the Circuit Court of Appeals on January 7, 1935.

STATEMENT

The appellant was convicted in the United States District Court for the Eastern District of New York on March 27, 1934, of a charge of conspiracy with seven co-defendants of whom two were found guilty and a third had pleaded guilty (R. 27-32, 696). The defendant was sentenced to be confined in a penitentiary or prison camp for the term of one year and one day (R. 968). The substantive counts of the indictment numbered 1, 2, 3, 4, 5, 6 had been dismissed by the Court. As to the substantive counts numbered 7 and 8, the appellant was found "not guilty". The judgment of conviction was affirmed by the Circuit Court of Appeals on November 13th, 1934.

A—The Indictment

The indictment consisted of nine counts. The first eight charged substantive violations of Sections 263 and 265 of the United States Code, Title 18. The first six counts charged uttering and passing counterfeits of notes issued by the Federal Reserve Bank of Dallas, Texas (R. 4-22). The seventh and eighth counts charged a like offense with reference to counterfeits of an issue of the Federal Reserve Bank of Chicago, Illinois (R. 22-27).

The ninth count charged a conspiracy: "that the defendants did unlawfully, wilfully and corruptly combine, conspire and confederate and agree together • • • with intent to defraud, to possess and keep in their possession and conceal with intent to utter, publish, and

pass the same * * * falsely made, forged and counterfeited" notes in the denominations of $20 and $100 "knowing that the said circulatory notes * * * were falsely made, forged and counterfeited, and intending then and thereby to defraud divers persons" (R. 27-29).

B—The Testimony

The record of the testimony is quite voluminous. Comparatively little of it directly involved the appellant. The mass of it, however, so colored the trial, and the error was so continuous that the entire testimony appears in the transcript. For the purpose of argument, a short summary of the facts in a manner most favorable to the respondent should be sufficient (while a complete analysis of the evidence is set forth infra pp. 42-58.

JACK KATZ, an alleged co-conspirator who had turned State's evidence, testified that he met the defendant Rice, whom he had known at Sing Sing (R. 137, 139). Rice told him he had an idea whereby they could make some money buying jewelry from people who advertised in the newspapers such jewelry for sale, paying therefor with counterfeit money (R. 144-145, 166-170). He met Berger at the apartment of Miss Molnar and Miss Talle. Their first conversation was sometime in the latter part of December, before Christmas. Berger said that one of the girls told him that Katz had counterfeit money and asked to be shown the bills. Katz got one of the $100 bills and showed it to him. Berger said it looked pretty good. Before New Year's Day, Berger introduced Jones to him. Jones asked if he could give him a few of the bills. Katz called Berger aside and told him he did not know the fellow and asked what type of a man he was. Berger said he was O. K. and not to worry about him: Jones would never say anything. Katz spoke to Jones

who said he would pass the bills in hockey games in Madison Square. He could get rid of them on the bookies there (R. 158-159). The following night he came back there. Berger and the girls were also there. He gave Berger the four $100 bills as he did not want to hand them to Jones directly; Berger immediately turned them over to Jones and Katz received $100 (R. 160).

Two of these bills were passed by Jones (R. 54, 70-73). He admitted doing so, believing they were good. Jones testified that he had received those bills not from Berger but as his winnings on a bet from a bookmaker for whom Katz was a runner. That he had never been in the girls' apartment and had not met Katz through Berger (R. 406-408).

Godby and Kett, both secret service operatives, testified that, when first questioned, Berger had admitted taking Jones to the girls' apartment and introducing him to Katz (R. 243-244, 550-551). *No one but Katz had ever seen Berger with counterfeit money or heard of him passing it* (R. 267).

Katz, who was the main witness and himself the really active wrongdoer, had a record of five previous convictions:

> On September 5, 1921, as Harry Katz, Atlantic City, New Jersey; larceny, sentence suspended; on September 17, 1923, as Harry J. Katz, Atlantic County, New Jersey; grand larceny, indefinite term, Rahway, New Jersey State Reformatory, as Jack Pearce in 1932, no date, Holmesburg, Pennsylvania; larceny, sentenced to one year; on April 5, 1926, as Harry Katz, Los Angeles, California; forgery, three years probation. On April 18, 1929, attempted forgery, five years in State's prison, by Judge Rosalski (R. 180-186, 505).

Katz too had boasted: "I was arrested in every city" (R. 173). He had received a promise from the Assistant United States Attorney that "if Katz would testify truthfully, that *I would gauge that truthfulness by his testimony heretofore given in various places* . . . " then the eight substantive counts against Katz would be dismissed and a plea to the conspiracy count would be accepted; and Katz would be protected from the other defendants (R. 132-133). Thus the maximum penalty to which he would be subject was reduced from 122 years imprisonment and $50,000 fine to 2 years imprisonment and $10,000 fine (R. 176).

He first informed the Secret Service men that he had dealings with Berger on January 15th. This was after Berger had gone to the girls' apartment about 4 o'clock in the morning and found him there with another man (R. 202). He stopped being friendly with Berger the night that Berger broke into the apartment when he, the witness, was there with another man (R. 220). The other man opened the door after Berger had been pounding on it for a few minutes (R. 221). *He is not friendly with Berger and does not feel very good towards him* (R. 223). *He did not deny giving a message to an attorney, to carry to Harry Berger's attorney, saying he was sorry he brought Berger into it; that he knew Berger was not guilty* and he did it because he was sore at him and thought he was fooling around with his wife (R. 207). Upon examination by the Court, he admitted that Commissioner O'Neil stated he was crazy (R. 212).

Katz had also told the bondsman after the arraignment that Berger had nothing to do with the case and was innocent (R. 542, 547).

BERGER denied that he had ever had anything to do with any counterfeit bills. He showed that he was in

the real estate business, managing large properties, handling large sums of money for his principals and financially comfortable (R. 329-330). He met Katz and the latter's wife at the girls' apartment but never had any dealings with him (R. 331). When he found out Katz was an ex-convict, he told Miss Talle to keep Katz from the apartment (R. 331, 336). He never knew Katz was handling counterfeit money (R. 337). He never knew Jones to have been at the girls' apartment (R. 357) nor did he know that Katz and Jones were acquainted (R. 367).

Berger had known Jones because he ate at a luncheonette operated by Jones. He had tried, as broker, to aid Jones in the purchase of a concession (R. 327, 337, 338).

Berger admitted that ten years before, when only twenty years old, he had pleaded guilty to a charge of robbery (R. 325). For the succeeding ten years he had led an exemplary life, and nine witnesses (lawyers, brokers, an accountant and a former State Senator) testified to his good reputation and character (R. 285-324).

SPECIFICATION OF ERRORS TO BE URGED

(1) The Circuit Court erred in holding contrary to decisions of other Circuit Courts that the variance between the indictment and the proof was not material.

(2) The Circuit Court erred in holding that the misconduct of the prosecuting attorney permitted and condoned by the Trial Judge, while an abuse which should have been strictly controlled, was not prejudicial to the defendant.

(3 The Circuit Court erred in affirming a judgment based upon evidence admittedly "not strong", without proper corroboration of the testimony of the discredited and unreliable co-conspirator and where throughout the

trial the prosecuting attorney had misconducted himself so as to deprive the defendant of the fair trial to which he was entitled.

ARGUMENT

Summary

From the proof and as the Circuit Court below agreed, two separate conspiracies, distinct from the single one alleged in the indictment were proven. The court below held that immaterial. Such a stand is however contrary to the weight of authority and the holdings of five other circuits. It also appears to be inconsistent with a previous decision of the court below.

Such a variance has been held by the other courts to result in a total failure of proof of the crime charged. The lower court should then have reversed the conviction and the trial court have directed a verdict of acquittal.

It appears also that the proof adduced by the prosecution was so weak as not to satisfy the standard set by the weight of authority in criminal cases. Further while the proof was weak it came only from the lips of a discredited and concedely unreliable co-conspirator and there was a total failure of corroboration. This resulted in an error of law which should be rectified.

The trial court in the instant case also permitted and condoned actions upon the part of the prosecuting attorney which prejudiced the defendant and prevented him from securing a fair and impartial trial. This taken into consideration with the obvious failure of proof explains the reason for the conviction of the defendant.

The course of the trial sanctioned by the Circuit Court

was so contrary to the usual and proper course of trial procedure that this Court's power of supervision should be exercised to rectify the error. The injustice of permitting the judgment below to stand will appear clear.

I.

The indictment charges an agreement among and between all of the defendants and other unknown persons to utter and pass the counterfeit notes. Katz pleaded guilty and Rice, Jones and Berger were found guilty of it. To sustain the verdict it must be considered then, that all were acting in concert. The proof discloses a different situation, however.

Katz testified to the purpose or plan: he and Rice were to buy rings from people who had advertised them in the papers, and to pay for them with counterfeit bills (R. 153). That was the sole conspiracy according to the Government's main witness. Jones and Berger did not have any part.

If the facts alleged by the prosecution are considered in the light most favorable to the Government, it appears that Katz, Berger and Jones were engaged in a distinct and separate enterprise, the object of which was to permit Jones to pass some of the bills in an undetermined manner (R. 158-159). No matter how the facts are scrutinized it is impossible to connect Rice with Berger. The evidence does not show any mutual plan or understanding between Rice and Berger, nor that their minds met to pass the bills as alleged in the indictment. True, it may be taken that conspiracy has been proven. But it becomes obvious that there must have been two conspiracies: (1) the agreement between Rice and Katz; (2) the agreement between Katz, Berger and Jones.

The Circuit Court below agreed:

> "As we have said, the original arrangement was between Katz and Rice, and contemplated a limited use of the bills; that is, to buy rings. When Katz engaged Jones through the intervention of Berger, it was to pass the bills to tradesmen, and Rice knew nothing of it. Nor did Berger or Jones know that Katz was associated with Rice, though Jones was acquitted with Rice. So far as they knew, Katz might have got the bills from anyone. Thus the evidence really showed two separate conspiracies one of Katz and Rice, the other of Katz, Berger and Jones, with no connection except that Katz was a common member to both schemes, and that both concerned the utterance of the same bills. The question is whether it was error not to dismiss the case for a material variance, as Berger's attorney moved at the close of the evidence" (R. 753).

The Court held this variance not material, stating:

> "* * * It is indeed no answer to a bad practice to say that worse is tolerated already, but it is something to remember that in trials for this crime the latitude is wide. At any rate we are not content to dispose of the cause by the absolute doctrine that appears to have been accepted elsewhere; we believe that the error must be such as to 'affect the substantial rights of the parties'. (Sec. 391, Title 28, U. S. C.)" (R. 754).

The rule is otherwise in every circuit which has passed upon the question. In fact a variance of the type here found has always been considered a failure of proof.

In *Marcante et als.* v. *U. S.* (C. C. A. 10) 49 Fed. (2d) 156, 158, numerous defendants were charged with conspiracy to violate the National Prohibition Law. The Court said:

> "The difficulty is that the proof discloses nothing except one group conspiring with Irving to sell liquor in one locality; another group conspiring with Irving to manufacture liquor in another. Two conspiracies not alleged are proven, and there is no proof of the single conspiracy alleged."

The same principle was reiterated by the same Court in *Parnell* v. *U. S.* (C. C. A. 10) 64 F. (2d) 324, and *Telman* v. *U. S.* (C. C. A. 10) 67 Fed. (2d) 716, 718. In the latter case, the Court distinctly said:

> "Where one large conspiracy is charged, proof of different and disconnected smaller ones will not sustain a conviction."

In *Tinsley* v. *U. S.*, 43 Fed. (2nd) 890, (C. C. A. 8), the indictment charged conspiracy to steal horses. The proof showed that Tinsley had acted with Paul Widow and Philip Lone Eagle and that each had stolen horses pursuant to arrangement with Tinsley. The Court held that such proof disclosed two separate and distinct conspiracies and not the single conspiracy charged in the indictment; and that the verdict against Tinsley could not be sustained.

Similarly in *U. S.* v. *McConnell*, 285 F. 164, the Circuit Court of Appeals for the Eighth Circuit said:

> "If, however, the charge of conspiracy in the indictment is merely that all the defendants had a similar purpose in view and that each of four groups of persons were cooperating without any privity each with the other, and not towards the same common end, but toward separate ends similar in character, such a combination would not constitute a single conspiracy, but several conspiracies, which not only could not be joined in one count, but not even in one indictment."

And in *United Sttaes* v. *Wills*, 36 Fed. (2nd) 855, 859, the Circuit Court of Appeals for the Third Circuit said:

> "* * * when the government by the first indictment charged one conspiracy and proved others it did more than fail to prove the conspiracy charged; it proved other conspiracies not charged and thus created a variance which was complete in the technical sense and material in the sense of the law."

The same court had well and vigorously stated in *Wyatt* v. *United States*, 23 Fed. (2d) 791:

> "Having a responsibility for the enforcement in this circuit, not only of the National Prohibition Law, but of federal laws generally, we are strongly of opinion that the conspiracy statute should not be stretched to cover and be misused to convict for offenses not within its terms, and that, when resorted to, the conspiracy alleged must be proved as charged. When, as here, one large conspiracy is specifically charged proof of different and disconnected smaller ones will not sustain conviction; nor will proof of crime committed by one or more of the defendants, wholly apart from and without relation to others conspiring to do the thing forbidden, sustain conviction. *Terry* v. *United States* (C. C. A.) 7 F. (2d) 28, 30; *United States* v. *McConnell* (D. C.) 285 F. 164, 166."

In *Dowdy* v. *United States*, and *Funk* v. *United States* (C. C. A. 4) 46 F. (2d) 417, 423, the indictment alleged a conspiracy between all the defendants, and one Martin to violate the National Prohibition Act. The proof disclosed that Martin and Dowdy acted together and Martin and Funk worked in concert. The court held that Dowdy's conviction should not be sustained for (one reason) he

was convicted of a conspiracy separate and distinct from the conspiracy charged.

Similarly in *Terry* v. *United States* (C. C. A. 9) 7 Fed. (2d) 28, it was pointed out that the proof and not the indictment is the determining factor as to the crime. While both crimes proven may come within the scope of the indictment, the broad terms of the indictment setting forth but a single conspiracy cannot be deemed to embrace the similar yet different crimes proven. "The scope of the conspiracy must be gathered from the testimony, and not from the averments of the indictment. The latter may limit the scope but cannot extend it."

Thus we see the Circuit Courts for the Third, Fourth, Eighth, Ninth and Tenth Circuits clearly opposed to the decision of the lower courts herein. Strangely enough the Court below has handed down a decision in *U. S.* v. *Siebrecht et al.* (C. C. A. 2) 59 F. 976, which is not only consistent with the rules of the other circuits but opposed to its own decision herein. True the cases may be distinguished by showing that one of the conspiracies proven in the Siebrecht case had been barred by the Statute of Limitations, but the distinction is artificial. In the within case the Circuit Court dd thus attempt to reconcle its decisions, claiming that the variance was material in the Siebrecht case because of the bar of the Statute. It is interesting to note, however, that in deciding that case, the Court did not base its view of material variance upon the bar of the statute. After having shown that a single conspiracy had been alleged and two proven the Court unqualifiedly said:

> "There was, we are persuaded, a failure of proof of the single conspiracy alleged, which amounted to a fatal variance."

In no part of its opinion in that case did the Court even hint that because of the Statue of Limitations the variance was prejudicial. In fact it adopted the view of the other Circuits Court (see *Terry* v. *United State, supra,* and *Marcante* v. *United States, supra*) that the variance resulted in a failure of proof when it held:

> "Thus the Court relied wholly upon a single conspiracy of which we think there was insufficient proof."

The decision of the court below on this point is therefore inconsistent with its own previous decision as well as in conflict with decisions of five other courts of even jurisdiction.

The basis of every conspiracy is the agreement to do an unlawful thing or an innocent thing in an illegal manner. To constitute the offense at common law the joint evil intent alone was necessary. *Reg.* v. *Kenrick,* 5 QB. (Eng.) 49, Dav. & M. 208, 12 L. J. Mag. Cas. N. S. 135, 7 Jur. 848; *Heyman* v *Reg.,* 8 QB. 102, 28 L. T. N. S. 162, 21 W. R. 357, 12 Cox, C. C. 383, 8 Eng. Rul. Cas. 126. Under the statute involved "the confederacy to commit the offense is the gist of the criminality." *Pettibone* v. U. S., 148 U. S. 197. The unlawful agreement is the essential feature of the crime. Such, like all agreements, necessitates a meeting of the minds of the contracting parties. True, such agreement need not be characterized by any oral or written expression of consent. It is needless to say, however, that some definite proof of such mutual understanding is necessary. If two parties to the supposed plan have one purpose and three others have an entirely different purpose, it would be almost fatuous to declare that the five were working in harmony. By any normal view of the situation one must

concede that there are presented two separate compacts.

So here in the instant case, the defendant was charged with conspiracy to utter counterfeit bills. The proof showed at best a conspiracy between Rice and Katz to defraud owners of jewelry by buying their goods, with counterfeit bills; and an alleged conspiracy between Katz, Berger and Jones to sell Jones counterfeit bills to pass in an uncertain manner. Both may be unlawful conspiracies and both may come within the general category of the charge of the indictment. But their distinctiveness is apparent. The latter arrangement had no connection with the first except that Katz was a party to both. The original agreement contemplated nothing which could involve anyone but Rice and Katz. A conspiracy where no definite agreement is proven, may be inferred from the facts, but in this case the terms of the unlawful agreement were explicit—they did not depend on inference. It cannot then be extended to cover facts other than those consistent with the expressed purpose unless some proof of an agreed extension of the plan is offered. It follows that there could have been no meeting of the minds of Rice, Katz, Jones and Berger (either expressed or inferred). There being no mutual plan and purpose there could be no conspiracy as charged. Thus the indictment falls.

It has been claimed that the appellant was not prejudiced by the variance between indictment and proof, although it is admitted that "the evidence of Katz's trafficking with Rice was incompetent" (R. 755). Returning to the indictment we find that the prior counts involved only Katz and Rice (R. 4-22); and of the five overt acts charged in the conspiracy count (ninth) at least three had no connection with Berger (R. 29-32). Naturally, the greater portion of the testimony had abso-

lutely no legal relation to Berger, concerning itself with Rice. Of course the jury was cautioned not to consider all of the testimony as against Berger, but one knows that no jury can adhere to such an injunction.

Without question, the cumulation of improper acts proven either on the substantive counts or as overt acts of the alleged conspiracy was so overwhelming as to burden the triers of the fact, and make impossible the tracing of each act to its particular source and to its relevant portion of the indictment. The very volume, of what must be deemed irrelevant testimony, alone would serve to becloud the particular issue regarding Berger and prevent the jury—even if it willed otherwise—from obeying the charge. Why the Circuit Court, itself, must have been guilty of the same error! It said: "His (Berger's) association with Rice, even if Rice was a proven counterfeiter, did not taint Berger (R. 755). Yet there is not one word of testimony in the case to show that Berger ever associated with Rice, even met him, or ever knew of his existence.

The Circuit Court also said, "Jones was acquainted with Rice" (R. 753) although there is not one word of proof to that effect. In fact the evidence is to the contrary: that Jones had never seen Rice in his life (R. 409).

The Circuit Court has said that through this double proof, Berger benefitted because Rice testified (in effect) in the former's behalf (R. 755). Quite evidently, however, the jury did not believe Rice for it found him guilty on the seventh and eighth of the substantive counts in the indictment as well as the conspiracy count. It must be remembered too that the testimony with regard to the appointment at Roth's Restaurant including the alleged telephone conversation between Rice and Katz and the discussions in the restaurant itself (infra, pp. 46- 48) though not involving Berger offered some corroboration

of Katz. None of it had anything to do with the supposed conspiracy between Berger, Jones and Katz. It concerned only Rice. Yet it was proof of a conspiracy. The net result was that on Rice's denial of the incriminating substance of the telephone conversation and restaurant discussion, the jury refused to believe him on other matters. His testimony was then in the nature of a boomerang for instead of aiding Berger it must have injured him.

It is difficult to believe an absence of injury. The proof of the conspiracy concerning Berger was admittedly weak. Yet there is full, complete and strong proof of the substantive acts including those designated by the Grand Jury as overt acts. One cannot be so naive as to believe that the jury could be unaffected by the weight of that proof. In fact, after an analysis, one groping for the proof of the conspiracy alleged, must decide that it is based entirely on the proof of the numerous though unrelated affirmative acts done by Rice and Katz alone.

Another interesting point is presented. If Berger took part in the conspiracy then he was also guilty of counts 7 and 8 as an accomplice, just as guilty as Rice. Even the Court so charged:

> "Now, coming right to the point, if Berger did not give the money to Jones, then Berger did not commit this substantive crime that is charged here of aiding and abetting, because it isn't charged that Berger actually passed the money to this Berger, the tailor, it isn't charged that he passed the money to the woman Goldstein. It is charged that he aided and abetted by giving to Jones the money which Jones passed, and therefore he aided and abetted."

But inconsistently the jury found Berger not guilty on those counts.

The inference is irresistible, that the jury, in the same manner as the trial court failed to comprehend the distinction between the acts of Rice and Katz, and those of Katz and Jones allegedly involving Berger.

One must not neglect also, the all too probable result that Berger might be indicted jointly with Katz and Jones for an alleged conspiracy to pass, utter, etc., counterfeit bills (based upon the alleged sale of the bills by Katz to Jones through Berger). On the basis of the indictment at bar, double jeopardy could not be claimed. The allegations of the indictments would be distinct and the proof would be similar only in respect to the events transpiring at the girls' apartment. But as to that similarity, it may well be argued that such proof in the case at bar was solely for the purpose of proving that Berger had been a party to the greater conspiracy.

Only by an extremely narrow view of the testimony can one say that the appellant was not prejudiced. Yet no extended argument is necessary to illustrate the danger of the adoption of the rule of the Circuit Court below. Approval of that rule would permit a trial court to hold in any case that the variance was immaterial although one crime was charged and two totally distinct and separate ones were proven. The result is not very far from a ruling that the indictment need not charge the crime to be proven against an accused as long as it charges a crime.

What then becomes of the constitutional declaration of the Fifth Amendment? It is transformed into a vain injunction to which obeisance is rendered in formality only; its principles honored only in their breach.

Even in Great Britain where no such constitution as ours gauges judicial determination, we find the advocated rule sustained. Almost one hundred years ago in the case of *O'Connell et als.* v. *Reg.* (1844), 11 Cl. & Fin. 155, 3 L. T. O. S. 429; 9 Jur. 25; 1 Cox, C. C. 413; 8 E. R.

1061; the defendants had been charged with a general conspiracy to do several unlawful acts. The jury found all eight guilty of conspiracy to effect the first of the purposes, three guilty of seeking to accomplish the second group, and four guilty of a plan to perpetrate the balance. The House of Lords reversed the judgment after a plea that the defendants were found guilty by the jury of three separate conspiracies although only one was charged.

The rule has been consistently followed. *Reg.* v. *Manning* (1883), 12 Q. B. D. 241; *Reg.* v. *Quinn* (1898), 19 Cox C. C. 78; *Sykes* v. *Barraclough* (1904), 2 K. B. 675.

Precedent, the weight of authority, and reason dictate the conclusion that the crime charged was not proved and the variance resulting is both material and prejudicial.

II.

The main facts in the testimony involving Berger have been set forth herein (*supra*, pp. 3-6). They have, however, there been stated in a manner most favorable to the respondent. Still it must appear obvious that the proof against Berger was extremely weak, even if credible. The Circuit Court admitted "that the case against Berger was not strong" and that the proof "depended chiefly upon the testimony of Katz, who turned State's evidence against the rest, who had been several times convicted of other crimes, and who was a *thoroughly unreliable person.*" (Italics ours.) (R. 753.)

Katz—the thoroughbred criminal, the man who had been arrested in every city, who had been convicted five times previously, the one really active in passing the counterfeit bills and guilty on all nine counts, the witness who admittedly bore a grudge against Berger, the squealer who furnished information to save his own hide,

the guilty one who was to receive at most a sentence of two years (if he testified in a manner satisfactory to the Assistant United States Attorney), instead of a possible one hundred and twenty. He was the only real witness against this defendant. (*infra* pp. 45-47).

And what was the story that he fabricated with a mind intent on revenge? That Berger had received the notes from him and at the same instant turned them over to Jones. Not that Berger was to pass the notes. Not that Berger was in any respect to profit from the transaction. Not that Berger had anything to do with counterfeit bills at any time other than to see that Jones got them.

Does it not seem ridiculous that Berger, who was attempting to forget his previous conviction by leading an exemplary life, should even touch the things? If he were to get something out of it, it might be more logical. If he were hard pressed and needed money, his connection with such an enterprise might be understandable. But that was not his condition. His business appeared to be prosperous, both in the brokerage and management lines; he maintained an expensive car and associated with rich and prominent people (infra, p. 50). The probabilities all point to the falsity of Katz's testimony.

The only other testimony against Berger was that of Godby. He testified that Berger admitted taking Jones to the girls' apartment. But Godby is the Secret Service operative who came down from Elmira at the call of his friend on the Daily News. That there were innumerable operatives close at hand was immaterial (R. 245-248). The feather was to be in Godby's hat, and he left no chance of losing that feather. His testimony shows it (R. 266, 569-582). He seemed willing to inject anything into his testimony. His over-anxiety got him into difficulty. Desirous of showing Berger to be an ex-

convict, he stated Katz met Berger in Sing Sing. His embarrassment was obvious when he was shown that Berger left Sing Sing four years before Katz got there and that while Berger was in prison, Katz was in California. He resorted to feigned poor memory. But his memory of statements by Berger seemed clear—all too clear. Yet although statements were taken from every single one of the other defendants, he took none from Berger. That fact alone arouses inquiry. None of the operatives or the Assistant United States Attorney made any effort to explain that, even though it was admittedly the custom to make statements. Kett sought to come to his aid on rebuttal, but his testimony cannot be considered of moment since he failed to connect Berger on the direct sase. (Infra, pp. 48-49, 57-58).

Yet taking their testimony at its face value, it still does not prove Berger guilty. What if he did introduce Jones to Katz? There is no proof that such introduction was for an insidious purpose, no hint that it was to aid the perpetration of a fraud.

Opposed to this equivocal testimony and Katz' obviously false statements we can pit the testimony on behalf of the defendant. Berger and Jones categorically and unequivocally denied Katz's allegations. Both clearly showed that Berger had not introduced Jones to Katz (R. 331, 337, 347, 408, 409). Jones showed the manner in which he had received the counterfeit bills (infra p. 55). A fine array of character witnesses proved the splendid reputation Berger had developed since his conviction (R. 285-324). Berger also showed how Katz had believed the defendant was fooling around with Mrs. Katz, and started to wreak his vengeance. He showed, too, how Katz, having found out this was error, was anxious to release Berger (infra, p. 53). We do not have to

accept Berger's statement on this alone. Herman Wasserberger, the bondsman, corroborated it (infra p. 57). But, better still, in Katz's admission that he didn't feel good toward Berger, and Godby's admission that Katz had first gone to the Daily News to press alienation of affection charges before proceeding with the counterfeiting charge (R. 223, 273).

It may well be asked, "Why, if Katz had agreed to withdraw his false accusation against Berger after realizing that Berger had nothing to do with his wife, did he persist in them at the trial?" The answer is all too clear. The Assistant United States Attorney said:

> "If Katz would testify truthfully, that *I would gauge that truthfulness by his testimony heretofore given in various places* * * *"

then Katz would receive certain consideration, as the dismissal of the substantive counts (R. 132). The Assistant United States Attorney was out to convict as many as possible, he did not desire to see Berger let off. Katz did not renege because he feared to renege—the extent of the consideration was at stake.

Can one then consider Katz's testimony of any value? Can one find in the combination of the testimony of Katz, Godby and Kett any proof, which, even overlooking the defense testimony, demonstrated the guilt of this defendant beyond a reasonable doubt?

Yet the law is well settled that a person accused of crime is presumed to be innocent until the contrary is proven, and that such guilt can only be shown by proof beyond a reasonable doubt.

> *Lillienthal* v. *U. S.*, 97 U. S. 237;
> *Potter* v. *U. S.*, 155 U. S. 438.

This Court has said (*Lillienthal* v. *U. S., supra*):

> "In all cases, before a conviction can be had, the jury must be satisfied from the evidence, beyond a reasonable doubt of the affirmative of the issue presented in the accusation, that the defendant is guilty in the manner and form as charged in the indictment. *Com.* v. *McKie*, 1 Gray, 64; *Com.* v. *York*, 9 Metc., 125; *Com.* v. *Webster*, 5 Cush., 305; *Com.* v. *Eddy*, 7 Gray, 584; *Com.* v. *Wright*, Ben. & H., L. C. Cas., 229."

With the proof on the part of the prosecution remaining insufficient to overcome the presumption of innocence corroboration of Katz became important.

True, the early Common Law required no corroboration of the testimony of accomplices or conspirators. But the uncertainty and irresponsibility of such evidence was clear, especially where promises of immunity or favor were usually given. The general view then came to be that some corroboration was necessary. As early as 1838 we find it required in this country. (*State* v. *Kardin*, 2 Dev. & B. (N. C.) 407). Now at least half the States have enacted statutes making it imperative and the general rule seems to be that while a conviction may be sustained on the uncorroborated testimony of an accomplice, some corroboration is necessary. (4 *Wigmore on Evidence*, pp. 350-372.)

In *Holmgren* v. *U. S.*, 217 U. S. 509, 524, this Court said:

> "It is undoubtedly the better practice to caution jurors against too much reliance upon the testimony of accomplices and to require corroborating testimony before giving credence to them."

In *Sykes* v. *U. S.*, 204 F. 909, the Court said:

> "It is only when the evidence is sufficient to convince of the guilt of the accused beyond a reasonable doubt that one may lawfully be convicted of a crime * * * And the conclusion is that the uncorroborated testimony of the confessed perpetrator of a crime, contradicted under oath by herself, contradicted by other witnesses, and inspired by the hope of immunity from punishment, which in this case has since turned to glad fruition that another was an instigator or a participator in the perpetration of her crime is not only insufficient to establish his guilt beyond a reasonable doubt, but that it presents no substantial evidence of it. *Jahnke* v. *State*, 68 Neb. 154."

In the instant case, one may well look in vain for corroboration of Katz's testimony against Berger. No one, other than he, connected with Berger in any respect with the counterfeit bills. That his testimony is unreliable is clear. He admitted not feeling friendly toward Berger (R. 223). Three times he admitted Berger was innocent and stated that he would change his testimony accordingly (R. 207, 349, 542). From Godby's testimony, it seemed as if Katz was trying to charge Berger with alienation of affections (R. 273). That Katz was believed crazy by the Commissioner was recognized although Katz at first denied it (R. 212). That Katz had five times previously been convicted and once under an alias was admitted, although Katz at first had sought to conceal several of the convictions and had denied the alias (R. 135-136, 180-186, 505). That Katz had been promised what must be deemed excessive consideration must be recognized. In the place of a possible sentence of one hundred and twenty years, for testifying he was to receive at best two.

Can it be believed that Katz then left the stand un-

shaken and unassailed? The record discloses that he was completely discredited. Certainly then corroboration became not merely a cautious aid to the jury but an actual necessity. (*United States* v. *Murphy*, 252 Fed. 404.)

While admittedly the measure of credibility is for the jury to determine (*Caminetti* v. *U. S.*, 242 U. S. 470, 495) the obvious discrediting of the accomplice affected the sufficiency of the evidence and raised a question of law for the Court. It was incumbent upon the trial court to find that the absence of corroboration resulted in a failure of proof and it then became the duty of the court to direct a verdict of acquittal.

III.

Our system of jurisprudence has maintained one proposition as the beacon of our enlightment—that a defendant accused of crime is entitled to a fair and impartial trial. This has been scrupulously maintained by our appellate courts when individuals, always human, have by attack on public welfare become blinded to justice by the desire for vengeance in the name of public interest.

Graves v. *U. S.*, 150 U. S. 118;
Wilson v. *U. S.*, 149 U. S. 60;
Hall v. *U. S.*, 150 U. S. 76;
People v. *Slover*, 232 N. Y. 264;
People v. *Esposito*, 224 N. Y. 370;
People v. *Malkin*, 250 N. Y. 185.

That the prosecuting attorney in any case has much to do with the manner of conduct of the trial and that he can influence the atmosphere of such a trial is clear. That there is a burden upon the District Attorney as a

quasi-judicial officer to aid and maintain the proper judicial atmosphere and in doing so to prosecute the defendant solely on the facts of the case and by legitimate methods is well recognized. Improper questions, statements not based upon evidence, brow-beating of witnesses and excessive argumentativeness are forbidden. All these are prohibited because they tend to distract the minds of the jurors from the actual facts and real issues and create against the defendant a prejudice born of the fact that the District Attorney is recognized as a public officer who has apparently no interest in the case and who is at heart an altruist and interested solely in obtaining justice.

A study of the record in the instant case discloses that this defendant did not receive the fair and impartial trial to which every defendant is entitled. It also discloses that the prosecuting attorney went beyond the limits of non-partisanship and impartiality and attacked the defendant and the case with the virulence and venom of the nearly barbaric advocate who tilted in the lists for the case of his principal. But the age of defenders and trials by combat has long since gone. Our civilization at least in its Penal Law and procedure prides itself on having through evolution completely annihilated primativeness and barbarity. Yet occasionally, as here, our consciousness of civilization is pricked by ugly throw-backs.

Almost at the outset of the trial the Assistant United States Attorney makes clear his disposition. After an objection had been made he stated:

> "I do not mind your objecting but if it is an act to disconcert this witness you won't get away very long" (R. 151).

His quarrelling with counsel for the defense at the time is not only ludicrous but actually scandalous. That the

austere and dignified atmosphere of the court must have been disturbed by such actions is obvious (R. 172, 219-220, 222-223). His attitude is well displayed by this (R. 248):

> "Q. So you have the whole picture before you as he painted it for you?
> Mr. Singer: He did not paint anything. Stop the picture talk.
> The Court: Go ahead.
> Mr. Kamber: I withdraw the word 'paint'.
> The Court: You had better ask the question without the word 'paint'.
> Q. So he told you this entire story and you took it in for all it was worth?
> Mr. Singer: Let us not have any of that either.
> The Court: I will let that go."

And a short time later after a question had been asked and objection made defense counsel offered to withdraw the inquiry to save time; the Assistant United States Attorney replied:

> "Do not save time, save yourself" (R. 249).

And later:

> "Q. Did you tell this ex-convict——
> Mr. Singer: Let us not have that.
> The Court: We are talking about Katz.
> Mr. Singer: He is not the only ex-convict" (R. 249).

Jones' cross-examination (R. 410-418) consists of one long argument between the Assistant United States Attorney and that defendant.

Cross-examination of the defendant Rice too (R. 514-538) gave the Assistant United States Attorney fur-

ther opportunity to display his argumentativeness.

And during the defendant Berger's direct examination Mr. Singer continued his habit of interrupting:

> "Q. You have an automobile? A. A twenty-five hundred dollar car.
>
> Mr. Singer: That is a new defense. You do not need money.
>
> The Court: He can show the whole situation.
>
> Mr. Singer: That is a new defense." (R. 329.)
>
> * * * * * * *
>
> "Mr. Singer: What is that?
>
> Mr. Wegman: Never mind; I consent that it be stricken out.
>
> Mr. Singer: Never mind about striking that out. Let him go and tell how I know her; let us hear about it.
>
> The Court: What has that to do with Mr. Singer?
>
> * * * * * * *
>
> Mr. Singer: Is that all? I thought I was in that apartment with the gun.
>
> Mr. Wegman: There has been no suggestion of that altogether, and you know it.
>
> Mr. Singer: There might have been."
>
> (R. 340, 342.)

The persistent unfairness of the Assistant United States Attorney is clear on the cross-examination of the defendant Berger. Right at the beginning he purposely mis-states the defendant's testimony:

> "Q. The man who didn't have his pants on and was running around the apartment he wasn't there? A. No, Mr. Singer. Mr. Godby told me about it, if you want it, I will tell you, he told me 'If you give this man's name out, I will give you the works.'

Q. Give me the works? A. No, sir. Godby told me that.

Q. You are going to give me the works? A. Mr. Singer, you are a gentleman, I have nothing against you. You are doing your duty.

Mr. Wegman: You are not going to give Mr. Singer the works. Apparently Mr. Singer misunderstands you. Who made that statement?

The Witness: Mr. Godby says that.

Q. Wait a minute. Are you going to give me the works? A. Mr. Singer you are absolutely a gentleman, in my opinion, you are doing your duty here.

Q. Thank you very much. But I am only asking you are you going to give me the works? A. I do not give anybody such things, I never said it.

Q. All right. Then do not make the statement." (R. 350.)

His brow-beating of the defendant is seen throughout the case:

"Q. I wasn't in that apartment, was I? A. No, Mr. Singer.

Q. I didn't pull the gun on you and stick you up against the wall? A. No.

Q. I wasn't in this apartment at any time, as far as you know, was I? A. As far as I know, you weren't.

Q. You might have an idea that I may have been there? A. No, I should say not.

Q. I just want to get that part of it straight." (R. 351.)

And then concerning the defendant's pistol permit:

"Q. In this renewal for 1933 you had stricken out the fact that you wanted it on the premises but you wanted to carry it in your pocket? A. That is not true.

* * * * * * *

Q. I did it I suppose? A. I didn't say you done it Mr. Singer.

Q. I thought you did it, so here somebody was framed again? A. * * *"

(R. 380.)

Concerning a matter that had absolutely nothing to do with the defendant and the trial, the prosecutor was permitted to cross-examine the defendant viciously in what takes up six full pages of the record (R. 382-388), as to whether or not Mr. Singer had given Miss Wishnu his telephone number, as to the reason for his having done that, and as to whether or not Miss Wishnu had any connection with this case or whether she had been let off by Mr. Singer.

The Assistant United States Attorney, also unfairly and unnecessarily went into great detail concerning the relations of the defendant and Miss Talle, as to what he did at her apartment, how often he stayed there, whether he slept there over night, whether he had a right to indulge in what he did, and whether it degraded him. Clearly such facts had no bearing upon the issues of the case or upon the credibility of the defendant (R. 364-368).

The defendant had testified to making an effort to find out the name of the man who with Katz had been at the girls' apartment the night when Berger went there. Then the Assistant United States Attorney asked the defendant if Mr. Godby, the secret service operative, had been in the apartment. The defendant knew he had. He then asked:

"Q. You do not claim Mr. Godby had anything to do with these girls, do you?"

He then asked the some question concerning Agent Fitzgerald. The defendant insisted he couldn't swear for anybody else. The Assistant United States Attorney still persisted on the point:

> "Q. Do you include as those who may have been there, the Court and all the jurymen, and your own counsel?"

Defendant's attorney interfered, but the Court stated:

> "I am not going to stop him because the question includes the Court. I will let him answer it."

The predicament of the defendant is clear. His answer was obvious: "I should say not; that is ridiculous." But counsel would not leave that alone and insisted on following it up:

> "Q. It is ridiculous to include the Court, and the jury and your own counsel but it is perfectly feasible to include Mr. Fitzgerald, and Mr. Godby and myself. That is your answer, that is all. A. No."

Right thereafter the Court repeated to the jury:

> "He has answered that question, that it is none of you." (R. 391-393.)

At the end of this defendant's cross-examination the following took place:

> "Q. Now, Mr. Berger, do you remember yesterday when the court recessed for a few minutes and you saw me out in the hall; do you remember that?
> A. I do, Mr. Singer.
> Q. You talked to me out in the hall? A. I talked to you?

Q. Yes? A. No.

Q. *You say you didn't say to me out in the hall yesterday, 'You wait until I take the stand and I will take care of you'? You didn't say that yesterday?* A. No; I didn't, Mr. Singer, you are lying.

Q. I am lying, you are right. You didn't say that at all? A. No.

Q. You didn't speak to me out in the hall? A. I never did speak to you outside since this case started, except the day I was in your office, when you questioned me.

Q. I said yesterday. A. No, Mr. Singer.

Q. Do you mean that seriously? A. I said no.

Q. That never happened? A. No, Mr. Singer, it did not.

Q. You did not say that to me? A. I did not. What do you want me to answer you?

Q. *I want you to tell me I am lying, is that so?* A. I told you that once.

Q. No question about that at all? A. No question about that." (R. 393-394.)

The Assistant United States Attorney's propensity for making statements injurious to the defendant and actually inadmissible in the guise of questions, is clear from the following:

"Q. Didn't you tell me, Mr. Wasserberger, and I am sorry you brought this up, but as you took the stand, you are going to be bound by it, *didn't you tell me that the only reason that you wanted to get those girls out for Berger was because you felt if you could get them out on bail they would not say anything about Berger?*" (R. 544.)

During the defendant's cross-examination too the Assistant United States Attorney, although there was no evidence to that effect, asked the following questions:

"Q. You never told us about the time Jones and you came up to the girls' apartment?"

And then followed it up:

"Q. *Didn't you tell me you brought Jones up there?*"

"Q. *I am lying?* • • •

Q. *Do you say now that you never told me?*" (R. 357.)

And later on:

"Q. Didn't you tell me up at the District Attorney's Office that it was your girl friend, Miss Siegel or Talle who had informed the police that you had a pistol permit and you had a criminal record?" (R. 362.)

It will be noted that in spite of all this no statement of this defendant was offered in evidence, for he did not make any such statement, and Mr. Singer did at no time attempt to take the stand to testify as to the conversations he had with this defendant.

In his summation, counsel for the Government, continued in the same manner in which he had persisted throughout the examination of witnesses. He opened with a malicious attack on defense counsel (R. 614-616). Then he, again, proceeded to inject statements of alleged fact which were not in evidence: "he seems to forget too that this man was arrested long before he ever heard of this lawyer • • •" (R. 618). He proceeds to accuse Berger, without foundation in evidence, of leading a dual existence, of having fooled his friends and asserting that the character witnesses knew nothing about this defendant (R. 621):

"But no, each and every single character witness called here testified that they didn't know anything

about Berger, because Berger, just like the last man, Rice, was leading a complete double life, Dr. Jekyll and Mr. Hyde, in the flesh before you, the two of them.

* * * * * * *

"Well, that is a part of his nature, that is a part of his life, to attempt to fool his own friends, and that is what the testimony shows here."

"Well, if they were (his social intimates) he certainly fooled them, and I know he won't fool you. This is the point, you see. Every argument must come back to the one point. He fooled his friends, and they all said so. Is he going to fool any of you?

Mr. Wegman: Now, if your Honor please, I ask that the District Attorney be instructed to correct that mis-statement of fact.

The Court: I do not think that kind of interruption should be made. This is argument, he is not stating the evidence. If you have any exceptions, you can take them at the close of the argument.

Mr. Wegman: There is no evidence that he fooled any of his friends.

The Court: Go ahead.

Mr. Singer: I say to you again that he fooled those friends. Not a single one of them knew about him, because if they knew what he was doing over there at West 57th Street, if they knew of his association with these thieves, the men that Kamber called thieves, the man that his own lawyer called a rat, do you think that these honorable men would have come here and given testimonials as to his good character? *You have got the right to assume, you have got the right to think that he fooled them,* and to say to yourselves, 'This baby won't kid me.'"

Then still more savagely, having repeated the incidents of the notary and pistol permit applications, he repeats with each breath the word "liar" and ends:

"And if what his own lawyer says is true, if a man lies in one matter he may lie in everything so throw out everything he says, and *throw Berger at last where he really belongs.*"

Although Berger had no connection with the passing of the bill on Mrs. Goldstein, and all the Government witnesses so agreed, Mr. Singer attacked her, his own witness, in an effort further to prejudice Berger, and into his argument again injected his alleged personal knowledge:

"Mrs. Goldie Goldstein takes the stand. She says she knows Jones, and you can bet your bottom dollar she knew Berger. She stood right where I am now and looked at him and was afraid to go over there, and when I waved my arm everybody started to holler, 'Don't point at him.' You know the rules of law. Well, it is the most complicated game in the world. I was examining a woman that *I knew knew Berger and could identify him,* she was standing right here looking at him, and I couldn't say, "Isn't that the man?' Now, imagine that. But that is the rules of the game, and I have to play within those rules."

* * * * * * *

"Now, she finally got to see Berger, somebody had to almost pick him up and throw him in her lap——

Mr. Wegman: If your Honor please, I have got to object to this. I object to counsel——

The Court: Mr. Singer, nobody picked him up and nobody put him in her lap.

Mr. Singer: I didn't say that.

Mr. Wegman: It is unfair to state that.

Mr. Singer: 'Stand up,' said I, and when he stood up she said, 'Yes,' and then tried to explain it, explain the reason why she had failed to identify him before. She said, 'Well, it looks like there was something different about him now and then.'

From that time on everybody was laughing when the statement was made, 'Did he have a moustache?' Nonsense! She knew him when she took the stand. *You must remember, Jones had been to see her after he had been released. Remember, you are not dealing with a lot of ignorant school children.* Isn't it peculiar that she couldn't identify him when she was over there? Doesn't that sound ridiculous to you? Use your brains, and you can find out what was behind the failure to identify him. *They weren't slipping anything over on me. I knew before the case was over she would pick him out or be a sorry lady.*"

* * * * * * *

"It was a pretty tough break that she had to identify Jones, and if she could have avoided it I believe she would have, and *she tried to avoid identifying Berger*——

Mr. Wegman: I object to that.

Mr. Singer: (Continuing)—but her luck didn't hold out.

Mr. Wegman: I object to that."

* * * * * * *

"Mr. Singer: Gentlemen, you make your own minds up as to why she couldn't identify him at first, and I won't attempt to encroach at all on your own opinion."

Among other facts not in evidence we note the Assistant United States Attorney saying:

"Oh, you have his good pal Berger, who was not only taking care of him in a business way, but also was taking care of him up at this apartment where there were some ladies of pleasure."

What more than this did the jurors need to hear from a quasi-judicial officer before convicting:

"It (reasonable doubt) means, 'I got a conscience, I got a job, I am on the jury and I swore an oath to be a good, honest juror. Am I satisfied in my mind that these men committed a crime? If I am I will convict them; and that is your reasonable doubt. Of course, if you didn't want to take the job as jurors you should have refused and said, 'I do not have the heart, I do not have the moral fibre or strength to judge my fellow man. I would rather duck the issue and leave it for somebody else.' But *you took the job, and I am going to hold you strictly accountable to your oath.*"

A summary finds that the Assistant United States Attorney in his zeal was guilty of almost every act of misconduct which has many times been proclaimed error:

"Altercations between counsel, including imputation as to veracity, interjection of prejudicial matter by way of remarks during the trial, asking incompetent questions, merely for purpose of prejudice, the improper browbeating of witnesses, * * * improper argument to the jury," 26 Ruling Case Law 1022.

"Persistence of the prosecuting attorney in asking improper questions in order to prejudice the jury may amount to such misconduct as to require a new trial." (Citing: *State* vs. *Greenland*, 125 Iowa 141; *Baldwin* vs. *State*, 11 Oklahoma Criminal Reports, 228; *State* v. *Roscon*, 119 Iowa 300) Corpus Juris, Vol. 16, p. 1143.

"A counsel's argument is in its purpose a connected presentation of the facts supposed to have been proved by the evidence tending in favor of his client. * * * Any representation of fact, therefore, which is made by him in the argument, must not be an assertion made upon his own credit * * * To bring forward in argument an assertion of fact * * * is to become a witness; and to be a witness without being subjected to cross-examination is to

violate the fundamental principle of the Hearsay rule." 3 Wigmore Evid. 837.

"The same general principle governs the putting of questions to witnesses. The jury may under certain circumstances obtain an impression, from the mere putting of illegal questions which are either answered in the negative or are not answered because illegal and excluded, that there is some basis of truth for the question." *Id.* 850.

That the misconduct of counsel for the prosecution during the trial prejudiced the defendant and his case so as to deprive him of a fair and impartial trial is clear. *Johnson* v. *U. S.*, 131 C. C. A. 613, 3 Wigmore Evid. Sec. 1808; *Graves* v. *U. S., supra; Hall* v. *U. S. supra; Wilson v. U. S. supra.*

Upon these matters the court below in its opinion said:

"It is indeed true that this officer failed in moderation and good taste, we might have been better content had the trial judge seen fit to keep him more closely in hand than he did" (R. 755).

It termed the actions of the prosecutor an "abuse of his position." (R. 755). It further said:

"More can be said as to these questions which he put to Berger, implying that Berger had made declarations to him, contradictory of what he swore to on his direct. That common device is an abuse which ought to be strictly controlled at times even at the cost of a mistrial if need be. But again, it would be extravagant now to reverse the conviction on its account, for it is fantastic to suppose that it substantially determined the outcome. If it colored the whole as perhaps it did, and as it was certainly intended to do, the shade that it added we can scarcely detect, today when mere possibilities

do not interest us as they did our forerunners; we demand more tangible evidence that damage has been done."

With the proof against the defendant admittedly so weak, the actions of the prosecutor became important. It hardly seems credible that the conviction would be based on the facts. The only proper conclusion is that the attitude of the Assistant United States Attorney and the atmosphere he created aroused prejudice against the defendant, resulting in the verdict.

The presumption is that error produces prejudice, and it is only when the fact so clearly appears that an error challenged did not prejudice and could not have prejudiced, the complaining party, that the rule that error without prejudice is no ground for reversal is applicable. *Smith* v. *Shoemaker*, 17 Wall, 630, 639; *Deery's Lessee* v. *Cray*, 5 Wall. 795; *Moores* v. *Citizens' National Bank of Piqua*, 104 U. S. 625, 630; *Gilmer* v. *Higley*, 110 U. S. 47; *Boston & Albany R. R. Co.* v. *O'Reilly*, 158 U. S. 334; *Crawford* v. *United States*, 212 U. S. 183.

The view of the Circuit Court below is thus contrary to the rulings of this Court and the evident weight of authority. Further, by its decision, the court below has sanctioned such a departure from the usual and proper course of procedure as to call for the exercise of this court's power of supervision.

CONCLUSION

It is submitted that the decision of the Circuit Court was erroneous in determining the within case in a manner in conflict with the decisions of other Circuit Courts and

the weight of authority; in condoning the departure from the usual and proper course of trial procedure. The decision is grossly and manifestly unfair and improper and calls for the exercise of this Court's power of supervision.

The judgment should be reversed and the indictment dismissed, or a new trial granted.

February 18, 1935.

Respectfully submitted,

NATHAN D. PERLMAN,
Attorney for Petitioner,
Defendant-Appellant,
Office and P. O. Address,
475 - 5th Avenue,
New York City, N. Y.

Of counsel,

SYDNEY ROSENTHAL,
and
SYDNEY S. SNYDER,

(Both of 10 Court Square,
Long Island City, N. Y.)

APPENDIX

Section 88 (Criminal Code, Section 37) Conspiring to Commit Offense Against United States

If two or mor persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both. (R. S. Sec. 5440; May 17, 1879 c. 8, 21 Stat. 4; Mar. 4, 1929, c. 321, Sec. 37, 35 Stat. 1096.)

Section 263 (Criminal Code Section 149) Counterfeiting National Bank Notes

Whoever shall falsely make, forge or counterfeit, or cause to procure or be made, forged or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be, in imitation of the circulating notes issued by any banking association now or hereafter authorized and acting under the laws of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter or publish, any false, forged, or counterfeited note, purporting to be issued by any such association doing a banking business knowing the same to be falsely made forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering, any such circulating notes, or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered or spurious circulating note issued, or purporting to have been issued, by any

such banking association, knowing the same to be falsely altered or spurious, shall be fined not more than $1,000 and imprisoned not more than fifteen years. (R. S. 5415; Mar. 4, 1909, c. 321, Sec. 149, 35 Stat. 1115.)

SECTION 265 (CRIMINAL CODE, SECTION 151) UTTERING FORGED OBLIGATIONS

Whoever, with intent to defraud, shall pass, utter, publish, or sell or attempt to pass, utter, publish or sell or shall bring into the United States or any place subject to the jurisdiction thereof, with intent to pass, publish, utter, or sell, or shall keep in possession or conceal with like intent, any falsely made, forged, counterfeited or altered obligation or other security of the United States, shall be fined not more than $5,000 and imprisoned ~~not~~ more than fifteen years. (R. S. Sec. 5431; Mar. 4, 1909, c. 321, Sec. 151, 35 Stat. 1116.)

TESTIMONY

The Prosecution

GOLDIE GOLDSTEIN testified that in the month of January, 1934, she had a concession in the Parisian Dance Hall at 1531 Broadway, New York, selling soft drinks and sandwiches and coffee. She saw Jones there many times. He came down to see her on a business proposition (R. 50). Jones came to her about 2 A. M. of a Thursday morning about the 4th or 5th of January and said he would then complete the purchase of her concession (R. 54). They had some drinks and she took him to her home to change a $100 bill he tendered her (R. 55). Jones said he had won it from Harry, a bookmaker on 43rd Street (R. 58). She could not identify the appellant Berger as one of the men who had at one time been with Jones until his counsel had him stand up (R. 59).

No one of the men, not even Berger had told her what his business was (R. 53, 59). But after prodding and leading by the United States Attorney she stated she *believed* he told her he was a real estate man from Queens, and that he was an attorney for Jones; that he was a real estate lawyer (R. 59). She had known Jones for about three months (R. 60). *When Jones changed the bill he did not have anyone else with him.* She believes Berger was there with Jones once or maybe twice. *It was certainly more than a week before she got this $100 bill from Jones* (R. 63).

NICK CAMROS, a waiter at the Parisian Dance Hall in January, testified that he saw Berger there, once or a couple of times (R. 65). He did not see Berger at the place the night before and *it was two weeks before then that he saw Berger* (R. 66).

SAMUEL BERGER testified that he owns the Lindy Clothes Shop where he sells men's clothes. Jones came there

alone on Thursday, January 4th, about 2:30 P. M. to buy a suit. He picked out a suit and gave him a $100 bill (Government's Exhibit 2). He gave Jones $75 in change (R. 70-73). A suit of clothes, the money and a letter of apology from Jones' wife was left in his store the following Monday morning (R. 76).

VINCENT D. TREANOR, a member of the Police Department of the City of New York, testified that he took Jones into custody on January 5th. He asked Jones where he got the counterfeit bill. Jones said he got it off a bookmaker on Broadway and 43rd Street. He searched his house and turned his pockets inside out but found no other counterfeit money (R. 79).

JOHN A. KETT, an operative of the United States Secret Service, testified: Jones told him he received Government's Exhibit 1 on Thursday, January 4th, from a bookmaker on 43rd Street and Broadway (R. 82). He gave him the names of horses and tracks he had played (R. 83). He described the bookmaker. He said he had not passed any other $100 bills. Jones later told him that he had not mentioned the bill given to Samuel Berger. He thought it was a good one (R. 85). He made a written statement and signed it in the presence of Agent Johnson and Kett. He gave Jones his card with his telephone number to call him if he saw the bookmaker Harry. Jones phoned him on Friday night, January 6th and said that he had run across the bookmaker at Broadway and 43rd Street, and had had an argument with him and tried unsuccessfully to have him arrested (R. 88).

MORRIS L. TUROFF and HARRY TUROFF, his son, identified Government's Exhibit 2 and on cross-examination testified as to the good reputation of the defendant Harry Berger (R. 89-96).

VITOLA PICCONE, residing at 414 Atkins Street, Brooklyn, testified she advertised a diamond ring for sale. One man came to her house to look at it. She described the man and thinks she could recognize him if she saw him (R. 89-99). Katz is not the man (R. 102). She sold the ring to the man for $325 receiving sixteen $20 bills (Government's Exhibit 4) and one $5 bill (R. 100-101).

NICHOLAS PICCIONE, her husband, testified that he knew the stone and the ring that had been sold and that he saw it again two days later when a fellow by the name of Harris, at the jewelry exchange, had offered to sell it to him (R. 104). He did not report to the police that he got the ring back (R. 105).

JESSIE HARRIS, a diamond setter in the jeweler's exchange in New York, testified he does not know any of the defendants (R. 107). He had gotten a ring from a man, named Stern, whom he had never seen before, but who was recommended to him, by a certain fellow he deals with and who gives his cards around. The man left the ring to be sold by him as a broker. He asked Piccione what the ring was worth. Piccione told him the ring was his, so he did not demand it back from him. Stern telephoned and he told him what had happened about the ring. Stern said he would be down to straighten it out (R. 110-112).

EDNA NAPP, an employee of the Nat Lewis Haberdashery Shop, testified. She knows the defendant, Jack Rice, who had been a customer for five years (R. 116, 118). At Christmas time she waited on him and he paid for the merchandise with a $100 bill (R. 116, 117).

NAT LEWIS testified that Rice had bought from his store frequently during the last four or five years (R. 119). A few days after Christmas he phoned Mr. Rice and told him that he would like to see him with regard to a $100 bill which had been returned by the bank as counterfeit. Rice told him if he thought he had given him the $100

bill he would make it good. Rice paid him moneys on the bill (R. 120). He could not identify the bill. (Government's Exhibit 5 for identification.) (R. 122.)

BERNARD ZIMMERMAN, lawyer testified that Katz came to see him about a ring which had been advertised for sale by his brother. He arranged to sell the ring for $570.00 receiving payment in six one hundred dollar bills. (Government's Exhibit 6 for identification) (R. 124-128).

MARY DALTON, employed by Dr. Leo Michel, testified that on December 19th, Katz was examined by the doctor and paid her with a bill identified by her (Government's Exhibit 7 for identification) (R. 129).

Before Jack Katz testified the Assistant United States Attorney stated his agreement with Katz; that if Katz would testify truthfully, such truthfulness to be gauged by testimony previously given, he would accept a plea to the conspiracy count, and subsequent to the disposition of this case nolle the other counts against him; that he would aid to obtain a separation from the other defendants during trial and after sentence (R. 132-134).

JACK KATZ then testified as a witness on behalf of the Government. He was convicted of the crime of forgery, was sentenced to a term of imprisonment at Sing Sing Prison, and is at present out on parole on that offense (R. 135). He has also been convicted in Philadelphia for Petit Larceny (R. 136). He saw Lee outside of the Hotel Victoria around March, 1933. As a result of that talk, he later met Jack Rice. He was in Rice's office a couple of dozen times. There was an engraving business being carried on there. They asked him to sell beer labels to breweries on a commission basis. Then he got into trouble and went to Sing Sing for violation of parole (R. 138-141). He came out on November 15th and went in

to see Rice again. He told him he had an idea where they could make some money taking ads out of the newspapers of people advertising for rings and different things and he could go over and buy the rings, paying with counterfeit money (R. 143). He went to the office of Bernard K. Zimmerman and bought a diamond ring. Rice had picked out the ad and given him the six $100 bills. He gave the six bills to Zimmerman (R. 144-145). He gave the ring to Rice. Also at Dr. Michel's office he passed a $100 counterfeit bill which he had received from Rice (R. 146). He never got any counterfeit money from any one but Rice (R. 107). *None of the defendants except Lee was ever present when he received money from Rice* (R. 453-454). At the appointment made with Rice for Roth's Restaurant he had told him to bring a large bottle of ginger ale with him and this was understood between them to mean a $100 bill (R. 155). This meeting in Roth's Restaurant was in January around the middle of the month. Prior to that he had met all of the defendants. He had met Miss Talle and Miss Molnar in a room in the Wellington Hotel that belonged to these two and a third girl. The girls moved to an apartment in the Park Vendome, 350 West 57th Street (R. 156-157). He met Berger there frequently. Berger spoke to him first about the money. Their first conversation was sometime in the latter part of December, before Christmas. Berger had another boy friend of his there. Berger said that one of the girls told him that he, Katz, had counterfeit money. He asked to be shown one of the bills. Katz got one of the $100 bills and showed it to him. Berger said it looked pretty good. Next he was introduced to Jones in the presence of the two girls Talle and Molnar. Jones asked if he could give him a few of the bills. He called Berger aside and told him he did not know the

fellow and asked what type of man he was. Berger said he was O. K. and not to worry about him; Jones would never say anything. Katz spoke to Jones who said he would pass the bills in hockey games in Madison Square. He could get rid of them on the bookies there (R. 158-159). The following night he came back there. Berger and the girls were also there. They went *into the bath room* and he gave Berger the bills as he said he did not want to hand them to Jones. These four $100 bills he had already received from Rice. He gave the bills to Jones and received $100 (Government's Exhibit 1 and 2) (R. 160). He testified that, using Government's Exhibit 4, he had bought the ring from Mrs. Piccione and turned it over to Rice to be disposed of (R. 166-170). He admitted he had gotten quite a few suspended sentences and: *"I was arrested in every city"* (R. 173). His *record showed many convictions* (R. 180-186, 505). From 1921 up to 1933, he had carried on his criminal acivities (R. 183).

He first informed the Secret Service men that he had dealings with Berger some time in January, on January 15th. This was after Mr. Berger had gone to the girls' apartment about 4 o'clock in the morning and found him there with another man (R. 202). He did not deny giving a message to one Samuel J. Siegel, an attorney, to carry to Harry Berger's attorney saying he was sorry he brought him into it; that he knew Berger was not guilty and he did it because he was sore at him and thought he was fooling around with his wife (R. 207). Upon examination by the Court, he admitted that Commissioner O'Neil stated he was crazy (R. 212). He stopped being friendly with Berger the night that Berger broke into the apartment when he, the witness, was there with another man (R. 220). *He is not friendly with*

Berger and does not feel very good towards him (R. 223).

ROBERT L. GODBY an operative of the United States Secret Service testified: He had met Katz on January 18th at the office of the New York Daily News (R. 226). At his suggestion, Katz phoned Rice in the office of the New York Daily News and he listened in on the other extension and heard the entire conversation. He and other agents were at Roth's Restaurant when Katz met Rice and Lee pursuant to the telephone conversation. Rice told Katz not to call him up any more, things were kind of "hot" and told him to stay away from the office (R. 231, 254). He was present when Berger was questioned. Berger admitted knowing Jones, that he had twice been with Jones in the Parisian Dance Hall in Manhattan, that he had only once taken Jones to the apartment on West 57th Street. He denied all knowledge of counterfeit bills. He said his only relation with Jones was in assisting him to purchase the concession at the Parisian Dance Hall (R. 233-234). Katz was introduced to him by Mr. Connelly an investigator for the New York Daily News. He knew Connelly very well. Connelly told him that Katz was passing counterfeit notes and he introduced him to Katz stating that Katz had valuable information for the Government. He knew Katz was an ex-convict (R. 245-256). Though he is in charge of Elmira which is outside of the New York District, Connelly had called him and given him this tip and in accordance with this tip he came down to New York and interviewed Katz after speaking with Connelly (R. 247). He continued to meet Katz practically every day or so (R. 259). Katz had told him that the plates for the counterfeit bills were in Rice's office. They searched the office but they did not find them there (R. 260). A:

the time he spoke to Katz no complaint had been made in his office. Katz told him that Berger had tried to put him (Katz) on the spot (R. 266). He did not go out to arrest Berger but called him on the telephone. When Berger came down to see him, he searched him and found no counterfeit money on him (R. 267). *No one except Katz had ever seen Berger with any counterfeit money or heard of him passing it* (R. 267).

JOHN J. FITZGERALD, a secret service operative, testified that all of the bills (exhibits) were counterfeit and were struck from the same plate (R. 276-277).

The Defense

ARNOLD GROSS and WILLIAM GLATZER, attorneys, DAVID DINNERSTEIN, MILTON ISTRICK, and RICHARD EPSTEIN, real estate brokers, JULIUS GERBER, public accountant, and BENJAMIN ANTIN, attorney and former State Senator, testified to the good reputation and character of the defendant Berger. Dinnerstein said Berger collected for him in two months time between $12,000 and $15,000 (R. 285-324, 303).

HARRY BERGER testified on his own behalf. He is thirty years old and is engaged in the real estate business at 7918 Woodside Avenue, Jackson Heights. He has been doing business in that community since 1926. In December 1924 he was arrested in Brooklyn by a policeman chasing a man who had shot at some person. When he heard the shooting he ran around the corner. He was arrested but nobody was able to identify him. He stayed in Raymond Street Jail for about eight months. When he was brought before the District Attorney at least fifteen times, they tried to have him plead guilty, but he refused. Finally on the advice of his attorney he took a plea on the recommendation that he would receive one year in jail and be credited with the eight

months already served. He accepted the plea and was sentenced to Sing Sing for one year. In December, 1925 he was paroled (R. 324-325). He had never had any trouble before that or since until this difficulty by reason of his acquaintance with Jack Katz (R. 326).

Berger first met Jack Katz around the middle of December, 1933. Jones was in charge of a luncheonette and soda fountain. Berger often had his lunch at the soda fountain and that is how he got acquainted with Jones. He has built and managed property, collecting the rents, making leases, etc. At one time he collected over $15,000 in cash but his monthly collections averaged $5,000 (R. 327-328). He has not had any particular need of money during the past several years. He has a $2500 car, he associates with some prominent people, well off financially, and enjoys their friendship. He is not married (R. 329). He knows Audrey Siegel, a registered nurse, graduate of Mt. Sinai Hospital, very well. He used to visit her apartment quite frequently (R. 330).

He met Jack Katz and the latter's wife in Audrey Siegel's apartment, at a housewarming. He has never had any business dealings with them. He did not know at the time that Katz was an ex-convict. When he found that out he insisted Katz leave or he would not come there any more (R. 331).

The day after Christmas Katz and his wife had an argument. Katz had no place to go so Miss Siegel allowed him to stay there. Two or three days later Audrey Siegel called him up and asked him to come to the apartment. He went there and she asked him if it was true that he was on parole. She said that Mrs. Katz went down to the parole officer and told him that Katz had beaten her up at Audrey Siegel's apartment and she

wanted him sent back for violating parole; also that Harry Berger was there. The officer was supposed to have told her he was on parole. The next day he went down to Mr. Doyle, the parole officer and explained him the circumstances. Doyle said he had not said anything about it, that he hasn't even got a record of his being on parole. To prove it he telephoned Mrs. Katz in his presence. But she wasn't in so he made an appointment for Monday morning. At the appointment Mrs. Katz denied everything Miss Siegel had told him, but said Audrey Siegel told her he was out on parole. When he got back he called up Miss Siegel and told her to force Katz to stay out of the apartment or he would never see her again. He never had dealings of any kind in a business way with Jack Katz. He never knew Katz was handling counterfeit money (R. 332-337).

In the early part of December Jones had called him at his office, said he would like to see him as he had some business to take up with him. Jones told him that a proposition was offered to him of a soda fountain and luncheonette in the Parisian Dance Hall. He went with Jones to look at the place. He spoke to a man representing himself to be the owner and he agreed with the suggestion to purchase the place for $1500. Negotiations were started. The owner wanted $300 a month and $300 security. This was all before Christmas. He was never back there after that. He has never seen Goldie Goldstein from that day until he saw her sitting in court (R. 337-339).

On January 13th Miss Wishnu who lived with Miss Siegel and Miss Molnar called him and said that Miss Siegel was expecting company and if he wanted to be surprised he should walk in on them. About 2:30 or 3 o'clock in the morning he stopped in at the apartment

at 57th Street. He rang the bell several times and he heard a noise in the apartment. Finally the door was opened and a man told him to come in. He walked in and the man pulled out a gun and asked him if he was Harry Berger, asked him if he had a gun. He was told to throw up his hands, and was searched. The man was from the Federal Department or the United States Attorney's office. He was there only in pants, no shoes and no undershirt. Jack Katz was there the same way. The davenport was down with room for at least four to sleep. Miss Siegel and Miss Molnar were there in their kimonas sitting up in bed. Champagne and ale bottles were all about, liquor was all over the place (R. 341).

He complained to Miss Siegel but she said he was going out with Katz's wife so why shouldn't she have a good time. He denied it but the man with the gun told him to have a seat while he got dressed. Then he took him downstairs and told him to forget about everything. Jack Katz was present at the time this remark was made by Audrey Siegel (R. 343). Two days later an inquiry was begun as to his pistol permit. The Grand Jury dismissed the charge (R. 344).

He received a call that a Mr. Price of the Daily News Building, said that if he didn't communicate with him at once the newspapers would be full about him. He went up to the Daily News and complained about it but they said they had no Mr. Price, but would check the call for him. Upon doing so they found that it was Jack Katz and that he was working with an Editor from the Daily News by the name of Collins about a certain man who was stealing the affections of Katz's wife (R. 346). Mr. Cassidy of the Daily News said that Katz had annoyed him to death to give him publicity in the paper. And

while he was at dinner with Katz and Captain McDermott, Katz told him and McDermott that unless he arrested Harry Berger he would go to see the District Attorney. It was the following day that Captain McDermott ordered Berger to bring in his pistol permit (R. 346).

About February 5th or 6th Miss Siegel called his office and stated that she was at the Custom House with Mr. Godby and wanted to talk to him. He telephoned Godby and Godby said it was about nothing at all but he wanted to ask something about Jack Katz and counterfeit money. Berger said he knew nothing about it but he would go down there anyway. There he met Godby, Miss Siegel, Molnar and Jack Katz. Godby asked him what he knew about the counterfeit money. He laughed, and asked if he was being kidded. Godby said it was a serious thing. Berger said he knew nothing about counterfeit money, had never seen any and never handled any and knew nothing about it. Godby said he would hold him and Jack Katz and send the two girls home, which he did (R. 347, 348). In Godby's office Godby, Kett and another man were standing around. Katz said to him: "Harry, were you fooling around with my wife? I want you to tell the truth." He said, "Jack, why do you think I would fool around with your wife?" Katz said, "Well, I've been told that you were fooling around with my wife, that is why I am out to get even with you" (R. 349). Katz told him that that was the reason why he was here but that he was going to deny the statement that he made against him and was not going to testify to that when he got to Court (R. 349).

Jones was never at the girls' apartment (R. 357). He did not tell Mrs. Goldstein he was a lawyer. He was at the Parisian Dance Hall merely to look over

the business and find out if it was a paying proposition (R. 361). Katz never mentioned Jones' name to him. He didn't know he knew him. Jones is not his friend. He has known him for three and a half years (R. 367). He asked Jones where he got the counterfeit money. Jones told him he had made bets on horses and hockey with Jack Katz and another man, known as Harry (R. 368). He didn't put anything about his conviction on the application for the pistol permit because he didn't want Lieutenant McGovern, head of the detectives, and Captain Keene, captain of the precinct, to know about it. They were friendly with him (R. 372). That had nothing to do with his brokerage license but it was the only way he had of making an honest living. He did not know that the failure to state his previous conviction was a crime (R. 373). He also said nothing about it on his application to become a notary because he wanted to conceal his past (R. 374).

EDWARD JONES, a defendant, testified that he intended to buy Mrs. Goldstein's concession and he went there for the purpose of watching the business, to see if it was paying. During the conversation he bought some drinks for $3.50. He asked if he could pay her the following night as he had only a $100 bill and a few cents with him. She told him she would gladly change the bill if it was good. He took the bill out and showed it to several people there and it was believed to be good. She took him then to her house and got change. She then gave him $96.50 good money. He had known Mrs. Goldstein for about three months at that time. He had seen her about three times a week during that time (R. 398-399). He stayed at her house all night till about 10 o'clock Friday morning, when he went to his place of business and the lady told him the secret service men were there,

said that he gave a counterfeit $100 bill and had left his card for him to get in touch with him. This was Agent Kett. He called Mrs. Goldstein and told her to meet him in half an hour and go to the secret service department with him. When he went home to get his raincoat, since it had started raining, he found Agent Kett there. When he asked him where he had gotten the bill he told him he had gotten it from a bookmaker with whom he had placed several bets on horses for the previous two weeks (R.339). Kett told him if he saw the bookmaker and he had counterfeit bills to call him at home (R. 402).

He went to New York that Friday night and saw the bookmaker. The latter told him that he never had a counterfeit. He said to bring anybody he wants to see him. He called Kett while with the bookmaker. Kett told him not to bother him any more about the case (R. 402). As for the bill which he had given to Berger the storekeeper, it happened that Thursday afternoon, around 1:30 he had placed a bet and after being paid off, went down to Mr. Berger's store about 3:30, after the bank was closed. He had taken some of his wife's money to make the bet and he had to get change in order to replace the money without her knowledge. As he needed a suit he went to Berger's for the suit. He went back to the store about 6 and told the clerk that if the suit was ready he would take it because he wanted to go to the hockey game at 8:30. The clerk got the suit for him and gave him the change from the bill. He took the suit and went home. That night he went to the hockey game, came out about 11:30 and went to Mrs. Goldstein's place, where he gave her the second bill. He received both of these bills from the same person, at the same time (R. 404, 405).

He had given the bookmaker about $60. It was worked on a flim-flam proposition. You don't make your own selections on the horses. The runner for the bookmaker whom he found later to be Jack Katz had induced him to bet in this manner (R. 406-407). At the time he passed these bills he thought they were good. He has never been in any apartment with the defendant Berger; he never knew anybody connected with this case except Berger; he had never seen the other people until he was brought into the case about two weeks ago. He had never been introduced by Berger to Katz; he never saw Katz hand Berger four $100 bills; Berger did not turn any bills over to him (R. 408-409). He never heard of Harry Berger having anything to do with counterfeit money (R. 449).

ELMER STAHLNECKER who had office space with Rice, testified he never saw Katz at the office. He also, with ETHEL B. MAHNKEN, GEORGE MASCHKE, PHILIP AARON and HENRY MCALEENAN testified that a jewelry engraving business was carried on by Rice at the office.

Henry McAleenan, Chas. J. Klauberg, Vincent Abbott, Charles E. Muniz, Jr., and Raymond Demarest testified as to the good reputation and character of Rice. McAleenan and Abbott also affirmed that Rice had done much work for their firms (R. 450-599).

JACK RICE, one of the defendants, testified. He has been in the jewelry engraving business since 1930. He denied ever having seen any of the counterfeit bills placed in evidence except the $100 certificate, Government's Exhibit 5 (the Nat Lewis Bill). (R. 510). He saw that in Mr. Lewis' store after Mr. Lewis had telephoned for him to come in. Lewis said he had given it to him several days ago. Rice did not think so, but since it was believed that he had passed it, agreed to make it good. He gave

him $50 at the time, which was practically all the money he had in his pocket. He took this bill, showed it to quite a few people, a Mr. Simmons (corroborated by John E. Simmons R. 585-587), Mr. Simmons' cashier and several people around there. Late that afternoon Lewis called and asked him to return the bill. He had to return it to the bank. Rice did that. He gave Mr. Lewis another $25. He has done work for Lewis. Lewis was a customer of his and trusted him with merchandise (R. 508-513).

On cross-examination he admitted he knows Katz, he met him on a few occasions. He met Katz at Roth's Restaurant after a telephone conversation. But Katz had not said to him to bring a large bottle of ginger ale with him (R. 515). The only dealing he had with Katz was that the latter had given him an emerald for mounting. Katz had told him that this was his wife's (R. 536).

HERMAN WASSERBERGER testified that after Berger had pleaded before Judge Inch he came down to the court in connection with re-writing the bonds. He refused to write the bonds and he got permission to go into the pen to explain why. During an argument with Berger and the two girls, *Katz said, "Go on and bail them out. They had nothing to do with this case anyway."* It was in reference to all three of them, Harry Berger and the two girls (R. 541-542, 547).

REBUTTAL

JOHN A. KETT testified in rebuttal that he did not hear Katz say to Berger that the reason he brought him into the case is because he thought he was fooling with his wife, and that when he got to the court he would not testify against him (R. 550). At the secret service office he

heard Berger say that he brought Jones up to the apartment where the girls were to introduce him to Katz (R. 551). Berger came in voluntarily pursuant to a telephone call (R. 556). *When a defendant makes any statement or admission it is his duty to reduce it to writing immediately. He did not reduce to writing Berger's so-called statement. Nobody did* (R. 556).

ROBERT L. GODBY testified he did not hear Katz say to Berger he wanted to know whether he had been fooling with his wife. Berger said he brought Jones up the girls' apartment to introduce him to Katz. When he questioned Berger he found that he was a real estate broker. He asked him how he could get a license when he had a conviction for a felony. He said he must have committed perjury to get the license. That since his father has charge of that in the State Department he decided to notify his father (R. 568, 569). He had said Katz told him he met Berger in Sing Sing (R. 266) but after being shown that Berger was out of Sing Sing in 1925 while Katz was in California and Katz didn't go to Sing Sing for the first time until 1929, he inclined to lose all recollection (R. 577-578).

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statement	2
Argument	3
Conclusion	12
Appendix	13

CITATIONS

Cases:

Bank v. *Kennedy*, 17 Wall. 19	3
Booth v. *United States*, 57 F. (2d) 192	9
Caminetti v. *United States*, 242 U. S. 470	9
Caminetti and Diggs v. *United States*, 220 Fed. 545, affirmed, 242 U. S. 470	11
Coates v. *United States*, 59 F. (2d) 173	8
Cudahy Packing Co. v. *City of Omaha*, 24 F. (2d) 3, certiorari denied, 278 U. S. 601	5
Dunlop v. *United States*, 165 U. S. 486	11
Exporters v. *Butterworth-Judson Co.*, 258 U. S. 365	5, 6
Frohwerk v. *United States*, 249 U. S. 204	8
Gardner v. *United States Fidelity & Guaranty Co.*, 60 F. (2d) 437	6
Harris v. *United States*, 71 F. (2d) 532, certiorari denied, October 8, 1934, No. 209	11
Hitchman Coal and Coke Co. v. *Mitchell*, 245 U. S. 229	8
Horowitz v. *United States*, 262 Fed. 48, certiorari denied, 252 U. S. 586	11
Imperial Beverage Corporation v. *Charles E. Hires Co.*, 55 F. (2d) 405	4
Jones v. *Buckell*, 104 U. S. 554	3
Mendelson v. *United States*, 58 F. (2d) 632	9
Old Nick Williams Co. v. *United States*, 215 U. S. 541	4
Pierce v. *United States*, 252 U. S. 239	8
Reliable Incubator Brooder Co. v. *Stahl*, 102 Fed. 590	4
Silkworth v. *United States*, 10 F. (2d) 711, certiorari denied, 271 U. S. 664	11

Cases—Continued. Page

Suydan v. *Williamson*, 20 How. 427 3
Taylor v. *United States*, 286 U. S. 1 5
Waldron v. *Waldron*, 156 U. S. 361 6
Wilson v. *United States*, 232 U. S. 563 8
Zottarelli v. *United States*, 20 F. (2d) 795, certiorari denied, 275 U. S. 571 8

Statute:

Judicial Code, Section 97 as amended (U. S. C., Title 28, sec. 178) 13

Miscellaneous:

Rules of the District Court for the Eastern District of New York:

Rule 5 13
Rule 26 14

Telegram from United States Attorney, dated December 15, 1934 15

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 544

HARRY BERGER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The trial court's charge to the jury appears at R. 656–695. The opinion of the Circuit Court of Appeals (R. 752–755) has not yet been reported.

JURISDICTION

The judgment sought to be reviewed was entered November 13, 1934 (R. 756). The petition for a writ of certiorari was filed in this Court November 26, 1934. The jurisdiciton of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The following questions are presented by the petition for writ of certiorari and supporting brief:

1. Whether there was a material variance between the indictment and the proof.

2. Whether corroboration was required of the testimony as a codefendant used as a Government witness.

3. Whether the conduct of the District Attorney constituted prejudicial error.

Unless the Court should be of the opinion that the bill of exceptions was signed and filed in time, a question which, we believe, is open to serious doubt, the questions stated above are not properly before this Court for consideration.

STATEMENT

The petitioner and two codefendants were convicted in the District Court of the United States for the Eastern District of New York under a count of an indictment charging a conspiracy to possess and pass counterfeit twenty and one hundred dollar bills (R. 27–32, 696). The prisoner was sentenced to imprisonment for a period of one year and one day (R. 698). The petitioner alone appealed to the Circuit Court of Appeals (R. 704, 706). That court affirmed the judgment of conviction (R. 752–756).

ARGUMENT

I

It is obvious from the statement of the questions presented by the petition for writ of certiorari and supporting brief that they involve the consideration of testimony introduced at the trial and of other matters occurring thereat which may, of course, properly be incorporated in the record only by bill of exceptions. *Suydam* v. *Williamson,* 20 How. 427, 432–433; *Bank* v. *Kennedy,* 17 Wall. 19; *Jones* v. *Buckell,* 104 U. S. 554.

The record in the instant case discloses that sentence was passed upon the petitioner in the District Court for the Eastern District of New York either on March 27 (R. 698) or March 28 (R. 41), 1934. The term of the District Court at which this judgment was entered would have expired by statute on April 4, 1934 (Section 97, Judicial Code, as amended; Appendix, *infra*), but it is provided by Rule 5 of the District Court for the Eastern District of New York (Appendix, *infra*) that "For the purpose of taking any action which must be taken within the Term of the Court at which final judgment or decree is entered, each Term of Court is extended for ninety days from the date of entry of the final judgment or decree." The term was, therefore, extended to June 26, 1934, for the purpose of signing and filing the bill of exceptions. The order settling the bill of exceptions and direct-

ing that it be filed was not, however, signed by the District Judge until August 23, 1934 (R. 703).

There are in the record no orders purporting expressly to extend the time for the preparation, signing, or filing of the bill of exceptions beyond the expiration of the term on June 26, 1934, and the United States Attorney for the Eastern District of New York advises that there were no orders in this case "other than those in the record." (See telegram copied in Appendix, *infra.*) There appear, however, in the record several orders entered pursuant to affidavits of counsel for the petitioner and upon stipulations with the United States Attorney, extending until August 25, 1934, the time within which to docket the case and file the record in the Circuit Court of Appeals (R. 722, 728, 734, 740). The stipulations of the United States Attorney were no broader than the orders (R. 727, 733, 739, 747). It is clear that, ordinarily at least, an order extending the time for docketing a case and filing the record in the Circuit Court of Appeals does not extend the time for signing and filing the bill of exceptions, and *vice versa,* the reason being, of course, that the two types of orders relate to different matters of procedure. *Reliable Incubator & Brooder Co.* v. *Stahl,* 102 Fed. 590, 593–594 (C. C. A. 7th); Longsdorf's Cyclopedia of Federal Procedure, Sec. 2822, Vol. 6, p. 286. See also *Old Nick Williams Co.* v. *United States,* 215 U. S. 541; *Imperial Beverage Corporation* v. *Charles E. Hires Co.,* 55 F. (2d) 405, 406 (E. D. N. Y.). Even

though a bill of exceptions is signed and filed in time, the case may be dismissed upon motion of the appellee if the record on appeal is not docketed in the appellate court on or before the return day of the citation, unless the time has been enlarged by order of court (Rule 11 of this Court; Rule 14 of the Circuit Court of Appeals for the Second Circuit). The bill of exceptions would, therefore, appear to have been signed and filed out of time, unless there are circumstances which take the case out of the general rule. (*Exporters* v. *Butterworth-Judson Co.*, 258 U. S. 365, 368; Cf. *Taylor* v. *United States*, 286 U. S. 1, 4–5.) So far as the record discloses, there appear to be no such circumstances.

Cudahy Packing Co. v. *City of Omaha*, 24 F. (2d) 3 (C. C. A. 8th), certiorari denied, 278 U. S. 601, does not seem to be in point. In that case the court recognized the general rule that an order extending the time for filing a transcript of record in the appellate court does not enlarge the time for filing a bill of exceptions, but held that it would be inequitable to apply this rule because the request for an extension was made at the instance of counsel for the defendants in error in order to enable them to examine a voluminous record, and because the District Judge, although intending to grant such an extension, made his order apply by inadvertence only to the filing of the transcript of record in the Circuit Court of Appeals. In the instant case the extensions of time for docketing

the case and filing the record in the Circuit Court of Appeals appear to have been requested merely for the accommodation of counsel for the petitioner (R. 724–726, 730–732, 736–738, 742–746), and the telegram of the United States Attorney (Appendix, *infra*) indicates that the orders were requested in this form because it was assumed that they included the filing of the bill of exceptions, rather than that the orders were the result of inadvertence.

The consent given by the United States Attorney at the time the bill of exceptions was signed to the settling and filing thereof (R. 702) does not affect the situation, for it is well settled that the consent must be given during the term. *Waldron* v. *Waldron,* 156 U. S. 361; *Exporters* v. *Butterworth-Judson Co., supra,* p. 369; *Gardner* v. *United States Fidelity & Guaranty Co.,* 60 F. (2d) 437, 439–440 (C. C. A. 10th).

Neither would it appear that the consents given by the United States Attorney to the entry of the various orders extending the time for docketing the case and filing the record in the Circuit Court of Appeals are of any effect, for, after providing that in a criminal case an application for an extension of time to prepare a bill of exceptions must be presented to the District Judge, Rule 5 of the District Court specifically directs that "The Judge shall consider the application and in his discretion grant or deny the same, *notwithstanding the consent of the United States Attorney.*" (Italics ours.)

II

The petitioner contends that while the indictment charged one conspiracy, the proof established two, and that there was, therefore, a fatal variance.

The Circuit Court of Appeals took the same view as to the evidence, but held, with much logic, that such a variance is not fatal, although it conceded that a contrary view is entertained by other Circuit Courts of Appeals (R. 752–755).

The view that there was a variance seems to be predicated principally upon the proposition that the arrangement between the two original conspirators was that the counterfeit bills were to be passed off to people advertising jewelry for sale, whereas the evidence does not disclose any such limitation upon the manner of disposing of the bills when one of these conspirators enlisted the services of the petitioner and another conspirator in passing off the bills.

Despite the view of the court below as to the scope of the evidence, we think that the proof may fairly be regarded as establishing but one conspiracy. The indictment charged a conspiracy to utter and pass generally counterfeit bills of certain specified denominations, but did not set forth the manner in which the bills should be passed (R. 27–29). It is true that at the start the evidence shows that the counterfeit bills were to be passed to persons advertising jewelry for sale, but the evidence also shows that as the conspiracy progressed other

methods of disposing of the bills were adopted; i. e., the passing of them to shopkeepers and others. These new methods were not the result of a separate conspiracy but merely the expansion of the original conspiracy, the object of which concerned itself dominantly with exchanging the bills for things of value. There could have been as many methods adopted as there were conspirators, and as long as any or all the methods contributed to the single objective of the conspiracy, all were bound, and each different method did not create a new and separate conspiracy. It was not necessary in order to incur guilt that the petitioner should know all the methods adopted by his coconspirators. See *Zottarelli* v. *United States,* 20 F. (2d) 795 (C. C. A. 6th), certiorari denied, 275 U. S. 571; *Hitchman Coal and Coke Co.* v. *Mitchell,* 245 U. S. 229, 249; *Frohwerk* v. *United States,* 249 U. S. 204, 209; *Pierce* v. *United States,* 252 U. S. 239, 244; *Wilson* v. *United States,* 232 U. S. 563, 567; *Coates* v. *United States,* 59 F. (2d) 173, 174 (C. C. A. 9th). We submit, therefore, that the conspiracy charged in the indictment did not cease to be single because of a change in the means of accomplishing its object. Under this view the cases relied upon by petitioner to establish a conflict of decisions do not require consideration.

The Circuit Court of Appeals lays some emphasis upon the fact that all of the conspirators did not know each other. This, of course, was not

necessary. *Coates* v. *United States, supra; Mendelson* v. *United States,* 58 F. (2d) 532 (App. D. C.); *Booth* v. *United States,* 57 F. (2d) 192 (C. C. A 10th). The circumstances attending the enlisting of the petitioner's aid in disposing of the counterfeit money were, we believe, sufficient to warrant the jury in finding that he knowingly entered the conspiracy (R. 158–160, 243–244.)

III

Petitioner contends that because Katz, the Government's chief witness, was a confessed criminal, corroboration of his testimony "became important." It is no longer necessary to corroborate such a witness. The jury is entitled to determine for itself the credibility to be attached to his testimony. *Caminetti* v. *United States,* 242 U. S. 470, 495. But we think the record establishes adequate corroboration, as pointed out by the court below (R. 752–753). The testimony of Katz here complained of agrees in many particulars with that of other Government witnesses and also with petitioner's own testimony. Furthermore, the trial court carefully cautioned the jury with respect to its duty in weighing the testimony of Katz (R. 672–673).

It must also be borne in mind that in weighing the Government's evidence the jury was confronted with the fact that petitioner had served a term for robbery and had also sworn falsely to applications

for a real-estate broker license and a permit to carry a pistol (R. 325, 371–372, 373, 374, 376–377).

IV

The final contention of petitioner addresses itself to alleged misconduct on the part of the District Attorney in examining witnesses and in his remarks to the jury. When the instances upon which petitioner relies are considered in their record setting, and not in isolation, coupled with the admonitions given by the trial court from time to time, and the following final instruction to the jury, we think it clear that no possible prejudice is shown to have occurred (R. 669, 693):

> Let us start out with this proposition, that whatever counsel may have said to you was the evidence given by any witness, whatever I may say to you was the evidence given by any witness, is simply our recollection. That does not control you. It is your recollection of the evidence which has been given which is controlling. If there be any doubt in your mind as to the evidence of any witness on any point, you may have that read to you by the stenographer, if you shall require it.
>
> Gentlemen, before we go into a further discussion there was in the summation yesterday a little dispute between some of the counsel as to their personal relations. Let me say to you that has no place in this trial. Counsel are not on trial, and whether they like each other or dislike each other is a mat-

> ter of absolutely no importance. We are not here determining any differences that they may have between each other. The people on trial here are the three defendants, and you will decide the case on the evidence that has been given here, not on any differences that there may be between counsel.
>
> * * * * * * *
>
> Gentlemen, without any sympathy, without any prejudice, without any bias, decide this case, * * *.
>
> Take the case and decide it as your oath requires you to do upon the evidence, upon the instructions of the Court, drawing from the evidence reasonable inferences which you have a right to draw, but determining the case on the evidence, not on speculation.

Four judges below found no prejudice ensued from the activities of the District Attorney here complained of, and it would require something more than general faultfinding to establish the contrary. *Harris* v. *United States,* 71 F. (2d) 532 (App. D. C.), certiorari denied, October 8, 1934, under No. 209; *Caminetti and Diggs* v. *United States,* 220 Fed. 545, 555–557, affirmed, 242 U. S. 470; *Horowitz* v. *United States,* 262 Fed. 48, 51 (C. C. A. 2d), certiorari denied, 252 U. S. 586; *Silkworth* v. *United States,* 10 F. (2d) 711, 721 (C. C. A. 2d), certiorari denied, 271 U. S. 664; *Dunlop* v. *United States,* 165 U. S. 486, 498.

CONCLUSION

For the reasons stated, we respectfully submit that the petition for writ of certiorari should be denied.

J. CRAWFORD BIGGS,
Solicitor General.
JOSEPH B. KEENAN,
Assistant Attorney General.
HARRY S. RIDGELY,
W. MARVIN SMITH,
Attorneys.

DECEMBER 1934.

APPENDIX

Section 97, Judicial Code, as amended (U. S. C., Title 28, Sec. 178):

> Terms of the district court for said district [Eastern District of New York] shall be held at Brooklyn on the first Wednesday in every month.

Rules of the District Court for the Eastern District of New York:

> RULE 5. *Extension of terms.*
>
> For the purpose of taking any action which must be taken within the Term of the Court at which final judgment or decree is entered, each Term of Court is extended for ninety days from the date of entry of the final judgment or decree.
>
> All applications for the extension of time to prepare bills of exception or assignments of error in criminal cases, or to prepare and certify records on appeal in criminal cases or in naturalization or habeas corpus proceedings, shall be presented to the Judge who tried the case or heard the proceedings, unless he is no longer in office or he be absent from the District, and in such case to the Judge holding the Criminal Term; and shall be accompanied by an affidavit showing due reason for such extension, the date of the final judgment or decree, and in criminal cases whether the defendant is in custody or on bail. The Judge shall consider the application and in his discretion grant or deny the same, notwithstanding the consent of the United States Attorney.

RULE 26. *Preparation and certification of records on appeal.*

(1) In any cause or proceeding wherein the final judgment or decree is sought to be heard upon appeal, the appellant shall serve on the opposing parties, not later than ten days after filing notice, or after allowance of the appeal, unless the time be extended by the Court, a typewritten or printed copy of his proposed apostles, record, or bill of exceptions, which shall include a statement of the material proceedings in the action, a list of the material proceedings in the action, a list of the material papers on record with the Clerk, the charge or opinion, if any, and the testimony proposed by him, together with a copy of the exhibits, or a list of such exhibits as can be identified by number or description. Within ten days thereafter the opposing party shall serve upon the appellant his proposed changes, additions, or amendments, numbered and with references to the record or stenographer's minutes. The appellant shall within four days accept such as he considers proper, and shall cause to be submitted to the Judge by whom the case was heard (or any judge who may legally act in his place) the proposed apostles, record, or bill of exceptions, and the proposed changes, additions, or amendments, with his acceptances and nonacceptances and with a reference to the record or stenographer's minutes as to such disallowances. The appellant shall give two days' notice of such submission, and either party may present a memorandum upon the points of difference. Before the expiration of the term, *ex parte* orders may be signed by any judge of the Court extending the term from time to time until after the record or bill of ex-

ceptions has been filed, but no record or bill of exceptions will be settled or filed after the term as extended by Rule 5 or by special order has expired. The appellant shall cause the proposed record or bill of exceptions when settled by the Court to be filed within the time limited and within the term as extended and so as to comply with the provisions of sections 997, 1000, and 1007 of the Revised Statutes as to the giving of security and as to the perfecting an appeal. The appellant shall then cause to be printed as many copies of such record on appeal as may be required by the rules of the Circuit Court of Appeals. All such printed books shall comply with Rule 31 of the Supreme Court of the United States and shall be upon pages eleven inches long by seven inches wide, with the printed portion seven inches long by four inches wide. One of such copies may, by order of the Court, with or without stipulation of the parties, be filed with the Clerk *nunc pro tunc* for use in lieu of the papers previously settled, and another copy of this record so filed shall be certified by the Clerk of the Court under seal thereof.

Telegram of December 15, 1934, to Solicitor General from United States Attorney for the Eastern District of New York:

> Your letter thirteenth Berger number five forty four no orders other than those in record apparently assumed order extending time to file record includes filing bill of exceptions.

U. S. GOVERNMENT PRINTING OFFICE: 1936

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	2
Summary of argument	8
Argument:	
I. The variance between the indictment and the proof as to the conspiracy count is not material and therefore does not warrant reversal of the judgment against the petitioner	12
II. The jury was entitled to convict the petitioner upon the uncorroborated testimony of Katz if it believed his testimony. There was, however, corroboration of that testimony, and although no request was made by the defendants the jury was instructed that it should rely upon Katz's testimony only if it found it to be corroborated	32
III. The petitioner was not deprived of a fair and impartial trial by the conduct of the Assistant United States Attorney	36
Conclusion	39
Appendix (Statutes involved)	40

CITATIONS

Cases:	
Bain, Ex parte, 121 U. S. 1	28
Bartell v. *United States*, 227 U. S. 427	19
Bennett v. *United States*, 227 U. S. 333	15
Bristow v. *Wright*, 1 Smith's Leading Cases, Part 2, 1417	27
Burke v. *United States*, 58 F. (2d) 739	16
Caminetti v. *United States*, 220 Fed. 545, affirmed, 242 U. S. 470	32, 33, 38
Diggs v. *United States*, 220 Fed. 545, affirmed, 242 U. S. 470	38
Dowdy v. *United States*, 46 F. (2d) 417	30
Dunlop v. *United States*, 165 U. S. 486	38
Fairmount Glass Works v. *Coal Co.*, 287 U. S. 474	38
Funk v. *United States*, 46 F. (2d) 417	30
Funk v. *United States*, 290 U. S. 371	32
Gavieres v. *United States*, 220 U. S. 338	18
Hardy v. *United States*, 256 Fed. 284, certiorari denied, 250 U. S. 659	15
Harris v. *People*, 64 N. Y. 148	16
Harris v. *United States*, 71 F. (2d) 532, certiorari denied, Oct. 8, 1934, No. 209	38
Harrison v. *United States*, 200 Fed. 662	16

Cases—Continued. Page

Hays v. *United States*, 64 F. (2d) 324 29
Horowitz v. *United States*, 282 Fed. 48, certiorari denied, 252 U. S. 586 38
Kepner v. *United States*, 195 U. S. 100 22
Kercheval v. *United States*, 36 F. (2d) 766, certiorari denied, 281 U. S. 745 16
Marcante v. *United States*, 49 F. (2d) 156 15
Meyers v. *United States*, 36 F. (2d) 859, certiorari denied, 281 U. S. 735 ..... 15, 19
Nash v. *Towne*, 5 Wall. 689 27
Parmagini v. *United States*, 42 F. (2d) 721, certiorari denied, 283 U. S. 818 38
Parnell v. *United States*, 64 F. (2d) 324 ..... 15, 29
Pennsylvania Co. v. *Roy*, 102 U. S. 451 38
People v. *Barrett*, 1 Johns. 66 20
People v. *Boneau*, 327 Ill. 194 16
People v. *Harrington*, 92 Cal. App. 245 16
People v. *White*, 22 Wend. 167 27
Rosen v. *United States*, 245 U. S. 467 32
Salerno v. *United States*, 61 F. (2d) 419 38
Siebricht v. *United States*, 59 F. (2d) 976 30
Silkworth v. *United States*, 10 F. (2d) 711, certiorari denied, 271 U. S. 664 38
Smith v. *United States*, 50 F. (2d) 46 16
Stevenson v. *Mudgett*, 34 Am. Dec. 155 27
Terry v. *United States*, 7 F. (2d) 28 31
Tinsley v. *United States*, 43 F. (2d) 890 ..... 7, 8, 15
United States v. *Baker*, 61 F. (2d) 469 31
United States v. *Ball*, 163 U. S. 662 ..... 10, 19
United States v. *Wills*, 36 F. (2d) 855 ..... 16, 19
Williams v. *United States*, 3 App. D. C. 335 16

Statutes:

Revised Statutes:
Sec. 954 (U. S. C., Title 28, sec. 777) 28
Sec. 1025 (U. S. C., Title 18, sec. 556) 41

Criminal Code:
Sec. 37 (U. S. C., Title 18, sec. 88) 40
Sec. 149 (U. S. C., Title 18, sec. 263) 40
Sec. 151 (U. S. C., Title 18, sec. 265) 41

Judicial Code, sec. 269, as amended February 26, 1919, c. 48, 40 Stat. 1181 (U. S. C., Title 28, sec. 391) 41

Miscellaneous:

Bishop's New Criminal Procedure, 2d Ed., vol. 2, p. 994 33
Holdsworth, History of English Law, vol. IX, pp. 304–307 25
Jones, Commentaries on Evidence, 2d Ed., vol. 2:
Sec. 864, pp. 1572–1573 26
Sec. 867, p. 1577 ..... 26, 27
Sec. 868, p. 1579 27
Parliament Papers 1830 XI 35 26

In the Supreme Court of the United States

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UNITED STATES OF AMERICA

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The trial court's charge to the jury appears at R. 463–487. The opinion of the Circuit Court of Appeals (R. 513–516) is reported in 73 F. (2d) 278.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered November 13, 1934 (R. 517). The petition for a writ of certiorari was filed November 26, 1934, and granted January 7, 1935 (R. 519). The jurisdiction of this Court rests upon Section

240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED[1]

1. Whether, on the facts of this case, proof of two conspiracies when only one was alleged constituted a material variance, requiring that petitioner's conviction be set aside.

2. Whether corroboration was required of the testimony of a codefendant used as a Government witness.

3. Whether the conduct of the District Attorney constituted prejudicial error.

STATUTES INVOLVED

The pertinent statutory provisions will be found in the Appendix, *infra*, pp. 40–42.

STATEMENT

An indictment in nine counts was returned against the petitioner and seven others in the District Court of the United States for the Eastern District of New York (R. 3–21). The only count

[1] In its brief in opposition to the petition for writ of certiorari (pp. 3–6) the Government suggested that it was open to doubt whether the bill of exceptions was signed and filed in time and therefore whether the questions presented by the petition were reviewable in this Court. A reply to the Government's brief was filed on behalf of the petitioner upon this point. The contentions of the parties with reference to the question are, we believe, sufficiently discussed in those briefs to permit disposition of the question, and we therefore do not feel that it would serve any useful purpose to indulge in any further discussion of the question here.

with which we are here concerned is the ninth count, which charged the petitioner and his seven codefendants with conspiring together and with persons to the grand jurors unknown, to possess and conceal, with intent to utter and pass, and to utter and pass, circulating notes of the Federal Reserve Bank of Dallas, Texas, of the denomination of twenty dollars and circulating notes of the Federal Reserve Bank of Chicago, Illinois, of the denomination of one hundred dollars, the defendants knowing that the notes had been counterfeited (R. 18–19). Four overt acts in pursuance of the conspiracy were charged (R. 19–21).

The petitioner and the defendants Rice and Jones were convicted upon the conspiracy count (R. 488). The defendant Katz became a witness for the Government pursuant to an agreement with the prosecuting attorney that if he would testify for the Government and his testimony was truthful, the United States Attorney would accept a plea of guilty upon the conspiracy count and enter a *nolle prosequi* as to the eight substantive counts of the indictment (R. 93–94).[2]

Upon the substantive counts of the indictment the petitioner was either acquitted by the jury or was successful in securing a dismissal (R. 204, 488). The petitioner was sentenced to imprisonment for a period of a year and a day upon the conspiracy

[2] Katz was subsequently arraigned, pleaded guilty to the conspiracy count of the indictment, and was sentenced to imprisonment for two years and to pay a fine of $100 (R. 25).

count (R. 489). He alone of the defendants appealed to the Circuit Court of Appeals (R. 491–499).

The bill of exceptions in this case covers over six hundred and fifty pages of the printed Record but only a comparatively small portion of the evidence contained therein relates to the petitioner. The principal witness against the petitioner and the other defendants was the defendant Katz. While he was, as the court ~~well~~ also pointed out, an ex-convict and in some respects a rather unreliable person (R. 513), his story was in various particulars corroborated by the testimony of other witnesses, including the petitioner and his codefendants. (See point II, pp. 32–36, *infra*.) In broad outline and omitting nonessential details, it was possible for the jury to have reached the conclusion from the evidence of Katz and other witnesses that the following facts had been proved:

The defendant Rice was in the jewelry engraving business in New York City (R. 99, 363). He had in his employ as a clerk in his office the defendant Lee, as to whom the indictment was dismissed because of the insufficiency of the evidence (R. 204). In the spring of 1933, Katz, who had known Lee while both were in Sing Sing Prison, met Lee in New York City (R. 97). Shortly thereafter, or according to Rice in June 1933, Katz was introduced to Rice through Lee (R. 98, 375). Rice told Katz about some beer labels Rice was making and told him that if he got out and sold them to brew-

eries, he would pay Katz a commission on them (R. 99–100). Katz then got into trouble and was sent back to Sing Sing for a violation of his parole (R. 100, 375). When he was released in November 1933 he went to see Rice at his office (R. 100). Rice told Katz that he "had an idea where he could make some money, taking ads out of newspapers, people advertising * * * rings and different things", for sale and that he "could go over and buy the ring and give him this money." (R. 101.) The money referred to was counterfeit money (R. 101). The bills shown Katz by Rice were twenty and one hundred dollar bills (R. 102). With the counterfeit money furnished him by Rice, Katz bought two rings which he turned over to Rice (R. 144, 117–120).

One of the counterfeit bills furnished by Rice was passed by Katz at a doctor's office in payment for professional services, and the change given Rice (R. 90–91, 103). It would also appear that Rice passed a counterfeit bill in a clothing store and that he had tried to get Katz to pass another at the same store. (R. 84–85, 87, 154–156, 365–370.)[2]

Katz first met Berger after the latter was released from Sing Sing in November 1933 in an apartment in New York City occupied by several girls. This was apparently around the middle of December 1933 (R. 110, 112, 234). Shortly before Christmas of that year Berger spoke to Katz about

[2] Rice knew that his clerk, the defendant Lee, was an ex-convict, and at some stage of his dealings with Katz was informed by Lee that Katz had served time in prison (R. 369).

counterfeit money. He said that one of the girls had told him that Katz had counterfeit money and asked to see one of the bills. Katz got one of the one hundred dollar bills and showed it to him, and Berger said it looked pretty good (R. 112). Berger then introduced the defendant Jones to Katz (R. 112, 394–395, 406–407).[4]

Jones asked Katz whether he could give him a few of the counterfeit bills. Katz called Berger aside and told him he did not know Jones and asked what type of fellow he was, as he did not want to take a chance of getting arrested if he gave him the bills (R. 113). Berger told Katz that Jones was "O. K., not to worry about it, the fellow would never say anything." Jones told Katz he intended to pass the bills on the bookmakers at hockey games in Madison Square Garden. Katz thereupon agreed to bring some bills to the apartment the following night. He did so, bringing four one hundred dollar counterfeit bills which he had gotten from Rice. Katz, Berger, and Jones went into a bathroom where Katz gave Berger the bills and Berger gave them to Jones. For the four one hundred dollar counterfeit bills Berger gave Katz one hundred dollars in good money, which he got from Jones (R. 113–114).

---

[4] Berger had known Jones for about three and one-half years (R. 234), and apparently before he introduced Jones to Katz had attempted to assist Jones in negotiating for the purchase of a soda fountain and luncheonette located in a dance hall (R. 37, 241–242).

One of the counterfeit bills purchased by Jones was passed by him upon the proprietor of the soda fountain and luncheonette in the dance hall referred to in footnote 4 (R. 34–36). Another one of the bills was passed by Jones at a clothing store (R. 46–50).

Petitioner admitted in his testimony that some ten years before he had pleaded guilty to the charge of robbery in the third degree (R. 233), and that subsequently he had failed to reveal in applications to obtain a pistol permit, a real estate brokerage license, and to become a notary public, that he was an ex-convict (R. 264, 265, 266, 269).

At the close of the Government's case, counsel for the petitioner made a motion to dismiss the indictment as against him. This motion was granted as to six of the substantive counts and denied as to two of those counts and as to the conspiracy count (R. 204). At the conclusion of the entire case counsel for petitioner moved for dismissal of the indictment against petitioner on the ground that there was no credible evidence to support it, and also upon the ground, with respect to the conspiracy count, "that the evidence adduced, without in any way appraising its value or its weight or its credibility, fails to support the charge of conspiracy set forth in that count of the indictment", citing *Tinsley* v. *United States*, 43 F. (2d) 890 (C. C. A. 8th) (R. 420–421). He also moved for a directed verdict of acquittal (R. 421).

These motions were denied (R. 421), and after the jury had returned its verdict that petitioner was guilty upon the conspiracy count (R. 488), counsel for petitioner moved to set aside the verdict upon the grounds made at the close of the Government's case and at the close of the entire case, including the ground "that the evidence on the conspiracy count failed to establish the conspiracy alleged in the indictment", citing the *Tinsley* case. This motion was denied (R. 488).

SUMMARY OF ARGUMENT

I

The conspiracy count of the indictment charged in general terms a conspiracy to possess, conceal and utter certain described counterfeit bills. The evidence showed the existence of two conspiracies of the kind alleged—one between Katz and Rice, and the other between Katz, Berger, and Jones. There was no evidence to connect Berger with the conspiracy between Katz and Rice, although it appeared that both conspiracies had to do with counterfeit money furnished Katz by Rice. The court below conceded that there was a variance between the indictment and the proof, but held it immaterial.

It is clear that if the proof had shown only one conspiracy, failure to connect all those charged would not have constituted a material variance. Moreover, if two conspiracies had been proved, but

the indictment had identified one to the exclusion of the other, those guilty of the one identified could have been convicted. Here the indictment failed to identify either conspiracy to the exclusion of the other, and it has been held that in these circumstances the variance is fatal. We submit, however, that cases so holding fail to meet the recognized tests for materiality of variances.

By the great weight of authority, a variance is not regarded as material unless it tends to mislead and embarrass the defendant in preparing his defense or exposes him to the danger of being twice placed in jeopardy for the same offense. Here the petitioner was put on notice that he must be prepared to meet proof showing that he conspired with any or all of his codefendants, and the nature of the alleged conspiracy was plainly indicated. The mere fact that Rice was eliminated from the larger conspiracy cannot have misled the defendant, for if Rice had been proved wholly innocent the petitioner's conviction could not have been set aside. How, then, can it matter that Rice was not wholly innocent, but was guilty of another conspiracy to which the petitioner was not a party?

There is no danger that the petitioner will be placed twice in jeopardy for the same offense. Should the Government attempt to try him again for conspiring with Katz and Jones, it would have to resort to the evidence produced at the first trial, and the petitioner could successfully plead the

former conviction. If he were reindicted for conspiring with Rice, the Government would not be permitted to set up the variance between its own indictment and proof at the first trial (unless the petitioner's conviction had been set aside on account of such variance), and the petitioner could show that he had already been found guilty of that offense. See *United States* v. *Ball*, 163 U. S. 662.

Moreover, the court below was clearly right in holding that the petitioner was not prejudiced by having Rice's case tried with his. The principal witness against the petitioner was Katz, and Rice's testimony not only failed to corroborate that of Katz in any material respect, but in fact tended to show that Katz was wholly unreliable. While evidence of Katz's relations with Rice was incompetent as against the petitioner, it gave no added weight to the evidence tending to connect the petitioner with Katz and cannot have harmed him.

Technical rules regarding pleading and proof are no longer looked upon with favor. Statutes in England and in many of our States have liberalized the rules as to variance in both civil and criminal cases, and such statutes have been broadly construed. The Federal statutes permit amendments to pleadings in civil cases, and while the Constitution precludes this remedy in criminal cases, substantially the same purpose is accomplished by the provision in Section 269 of the Judicial Code, as amended (*infra*, p. 41) that in both civil and criminal cases judgment shall be rendered " without

regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties." Taking this statute as a guide, the court below, after examining the record, concluded that the petitioner's " substantial rights " had not been prejudiced. We submit the decision is sound and should be affirmed.

II

The petitioner also contends that it was error to sustain a conviction based largely on the testimony of Katz, an accomplice and a confessed criminal. It appears to be well settled in the Federal courts that corroboration of the testimony of an accomplice or co-conspirator is not necessary, provided, at least, that the trial judge properly cautions the jury regarding the weight to be given to statements made by such a person. This was done in the instant case, and it was then for the jury to determine the credibility of the testimony. There is no rule requiring corroboration of the testimony of an ex-convict. Moreover, Katz's testimony as to the petitioner was corroborated by evidence of statements made by the petitioner himself before the trial.

III

The final contention of the petitioner is directed to alleged misconduct on the part of the Assistant United States Attorney in connection with the examination of witnesses and in his summation to the jury. We think the court below was right in

holding it not sufficiently improper "to compromise the essential fairness of the trial" (R. 516).

ARGUMENT

I

THE VARIANCE BETWEEN THE INDICTMENT AND THE PROOF AS TO THE CONSPIRACY COUNT IS NOT MATERIAL AND THEREFORE DOES NOT WARRANT REVERSAL OF THE JUDGMENT AGAINST THE PETITIONER

The petitioner and seven others were indicted in nine counts, of which eight charged the substantive offenses of possessing and concealing with intent to utter, and uttering, certain counterfeit money, knowing the same to be counterfeit, and the ninth charged conspiracy to commit the offenses described in the first eight counts. At the close of the Government's evidence motions to dismiss the indictment as to four of the defendants for failure of proof were granted. (R. 203, 204.) The petitioner's motion to dismiss was granted as to the first six counts, and he was held for trial on the last three. (R. 204.)

The ninth count, which is the only one involved here, charged in general terms a conspiracy between the defendants and other persons to the grand jurors unknown to possess, conceal, utter and pass, counterfeit twenty and one hundred dollar bills. It did not specify the manner in which the bills were to be passed, the persons to whom they were to be passed, or the parts to be played by the several members of the alleged conspiracy. Dismissal of the indictment as to four of the defend-

ants left Rice, Katz, Berger, and Jones as the only defendants as to whom the conspiracy count ~~was~~ could be submitted to the jury. Rice, Berger, and Jones were convicted by the jury on the conspiracy count; Katz pleaded guilty to that count.

As is indicated by the summary appearing at pages 4–7, *supra,* the evidence was that a conspiracy was entered into between Rice, the counterfeiter, and Katz, an ex-convict, for the disposition of counterfeit bills to be supplied by Rice. The plan which first occurred to Rice and Katz was to pass the counterfeit money on persons advertising in the newspaper rings and "different things" for sale, but the *modus operandi* soon expanded, for the evidence showed that Katz passed one of the bills at a doctor's office in payment for professional services and that Rice passed another bill at a clothing store. It is thus apparent that the Circuit Court of Appeals took too narrow a view of the evidence when it said that the arrangement between Katz and Rice contemplated a "limited use of the bills; that is, to buy rings" (R. 514).

The petitioner did not enter the picture until after the formation of the conspiracy between Rice and Katz. It appears that he learned that Katz had counterfeit money, and we then see him asking to be shown the bills, finding them satisfactory, introducing Jones to Katz, vouching to Katz for Jones' trustworthiness, and finally acting as a conduit for the transfer of the bills from Katz to Jones and for the delivery of good money in re-

turn from Jones to Katz. Thus the evidence tends to show a conspiracy between Katz, Berger, and Jones. It also shows a conspiracy between Katz and Rice. The difficulty with the proof is that it fails to connect the two conspiracies, as the court below observed, except insofar as it shows that Katz was a party to both and that both had to do with the utterance of counterfeit bills furnished by Rice. There seems to have been nothing from which the jury could find that the petitioner, when he had dealings with Katz and Jones, was aware of Rice's interest in the counterfeit money or knew that Katz was engaged in a conspiracy with any other person. Rice testified that Katz had never told him about Berger and that he had never heard of Berger before the case started (R. 385–386), and although the Circuit Court of Appeals stated that Jones was acquainted with Rice (R. 514), we are unable to find any testimony to that effect.

The petitioner's contention is that the proving of two conspiracies, where only one was charged, gave rise to a fatal variance between indictment and proof, which required that the petitioner be acquitted by direction of the court. The Circuit Court of Appeals conceded, as do we, that there was a variance, but held it not material on the ground that the petitioner was not prejudiced. We submit that this decision is correct.

If the proof had only shown one conspiracy, under the settled rule in the Federal courts failure

to connect all of those charged would not have constituted a material variance. *Hardy* v. *United States*, 256 Fed. 284 (C. C. A. 5th), certiorari denied, 250 U. S. 659; *Meyers* v. *United States*, 36 F. (2d) 859 (C. C. A. 3d), certiorari denied, 281 U. S. 735. Moreover, it would appear that if the proof shows two conspiracies and the indictment identifies one of them to the exclusion of the other, those guilty of the one identified may be convicted, although those guilty of the other must be acquitted. *Parnell* v. *United States*, 64 F. (2d) 324 (C. C. A. 10th). While the indictment in the instant case was broad enough in language to include either of the conspiracies proved, it must be admitted that it does not identify either conspiracy proved to the exclusion of the other, and it must also be admitted that at least two of the decisions relied upon by the petitioner and cited in the opinion below seem to hold that under such circumstances the variance is fatal. *Tinsley* v. *United States*, 43 F. (2d) 890 (C. C. A. 8th); *Marcante* v. *United States*, 49 F. (2d) 156 (C. C. A. 10th). We believe, however, that these decisions overlook the criteria which determine whether a variance is or is not material.

In *Bennett* v. *United States*, 227 U. S. 333, this Court said (p. 338):

> * * * * the essential thing in the requirement of correspondence between the allegation * * * and the proof is that the record be in such shape as to inform the defendant of the charge against her and to

protect her against another prosecution for the same offense.

The test of materiality of a variance thus stated by this Court accords with principles generally recognized and applied by other courts, both State and Federal. See *Harrison* v. *United States,* 200 Fed. 662 (C. C. A. 6th); *Kercheval* v. *United States,* 36 F. (2d) 766 (C. C. A. 5th), certiorari denied, 281 U. S. 745; *United States* v. *Wills,* 36 F. (2d) 855, 856 (C. C. A. 3d); *Smith* v. *United States,* 50 F. (2d) 46, 47 (C. C. A. 8th); *Burke* v. *United States,* 58 F. (2d) 739, 741 (C. C. A. 9th); *Harris* v. *People,* 64 N. Y. 148; *People* v. *Boneau,* 327 Ill. 194, 205; *People* v. *Harrington,* 92 Cal. App. 245, 254–255. The proposition was clearly expressed in *Williams* v. *United States,* 3 App. D. C. 335, where the court said (p. 344):

> The requirement of law, that the allegations and proofs in a cause shall be conformable each to the other, and that there should be no variance between them, is intended to subserve two purposes: 1st. That a defendant should be distinctly and specifically advised of the charges against him, so as to enable him properly to make his defense, and that he should not be taken by surprise in the testimony at the trial; 2d. That the judgment in the case might be pleaded with effect in any subsequent suit for the same offense or the same specific cause of action. * * *

Applying these criteria to the facts of the instant case, it is difficult, in the first place, to see how the petitioner could have been in any way misled in making his defense because the conspiracy charged in the indictment split up in the proof into two conspiracies. Eliminating those defendants as to whom dismissals were entered by the court, the indictment charged specifically that the petitioner not only conspired with defendant Rice, but also with Katz and Jones. There was ample proof of the conspiracy between the petitioner and Katz and Jones. Assuming Rice to have been wholly innocent of any conspiracy, it would be clear under the authorities cited that the petitioner's conviction must stand. Thus it must be taken that a defendant is not necessarily misled when the evidence establishes that some of those with whom he is alleged to have conspired were not participants in the common scheme. How, then, can it matter that the proof disclosed that Rice was not wholly innocent, but was guilty of a different conspiracy from that to which the petitioner was a party? The indictment seems clearly to have been broad enough to sustain a conviction on either of the two conspiracies, had the other not been proved, and we submit it cannot be said that the petitioner was not fully advised of the nature and identity of the alleged offense. Seldom can a defendant know precisely what the proof will show, but it must have been evident to the petitioner that he must be prepared to defend against proof

that he conspired with any one of those named to conceal and utter the counterfeit money described in the indictment. This being so, we submit that the variance cannot be regarded as material on the ground that it confused or misled the petitioner in respect of the offense with which he was charged.

There remains the question whether the variance was such as to expose the petitioner to the danger of being twice placed in jeopardy for the same offense. If the record will enable the defendant to show on a second prosecution that the same evidence is required to sustain the charge as was necessary to support the first prosecution, it is obvious that he is amply protected against the risk of double jeopardy. *Gavieres* v. *United States*, 220 U. S. 338, 343. If, despite the petitioner's conviction in the instant case, the Government should attempt to place him on trial a second time for the conspiracy with Katz and Jones, manifestly it would have to resort to the same evidence that it produced at the first trial, and the petitioner would be able to prevent a second trial by pleading the former conviction. Should the Government attempt to place the petitioner on trial under a second indictment charging that he conspired with Rice, the petitioner could show that the first indictment charged a conspiracy with Rice and that the jury must be taken to have found him guilty of conspiring with Rice because it returned a verdict of guilty against both. Moreover, parol evidence may be

offered, to show that the charges are identical. *Bartell* v. *United States*, 227 U. S. 427, 433.

While it is true that a defendant may not secure an acquittal on the ground of a variance and then escape trial upon a second indictment charging a conspiracy framed in the light of the proof adduced at the first trial (*United States* v. *Wills*, 36 F. (2d) 855 (C. C. A. 3d); *Meyers* v. *United States*, 36 F. (2d) 859 (C. C. A. 3d), certiorari denied, 281 U. S. 735), the Government is clearly not in a position to place a defendant on trial upon a general conspiracy with others, secure a conviction, and then allege in support of its second indictment that it was entitled to try the defendant again because the evidence at the first trial showed a variance between the allegations and the proof. This principle is recognized in the decision of this Court in *United States* v. *Ball*, 163 U. S. 662.

In that case Ball and two others were placed on trial upon an indictment which undertook to charge murder. Ball pleaded not guilty and made no objection to the indictment as being insufficient. He was acquitted. The other two defendants were convicted and on writ of error secured a reversal of their conviction because the indictment was defective. A new indictment was returned not only against these two defendants but also against Ball. Ball pleaded former jeopardy and this Court held that his plea was good. As showing the injustice which would follow in such a situation if the Gov-

ernment were permitted to take advantage of its own mistake, the Court quoted with approval from the leading case of *People* v. *Barrett*, 1 Johns. 66, as follows (pp. 667–668):

> In the leading American case of *People* v. *Barrett*, 1 Johns. 66, while a majority of the court, consisting of Chief Justice Kent and Justices Thompson and Spencer, followed the English authorities, Justices Livingston and Tompkins strongly dissented, and their reasons were fully stated by Mr. Justice Livingston, who, after distinguishing cases in which upon the first trial there had been no general verdict of acquittal by the jury, but only a special verdict, upon which the court had discharged the defendant, as well as cases in which the defendant himself had suggested the imperfection in the first indictment, and thereupon obtained judgment in his favor, said: "These defendants have availed themselves of no such imperfection, if any there were, nor has any judgment to that effect been pronounced. This case, in short, presents the novel and unheard of spectacle, of a public officer, whose business it was to frame a correct bill, openly alleging his own inaccuracy or neglect, as a reason for a second trial, when it is not pretended that the merits were not fairly in issue on the first. That a party shall be deprived of the benefit of an acquittal by a jury, on a suggestion of this kind, coming too from the officer who drew the indictment, seems not to comport with that universal and humane

principle of criminal law, 'that no man shall be brought into danger more than once for the same offence.' It is very like permitting a party to take advantage of his own wrong. If this practice be tolerated, when are trials of the accused to end? If a conviction take place, whether an indictment be good, or otherwise, it is ten to one that judgment passes; for, if he read the bill, it is not probable he will have penetration enough to discern its defects. His counsel, if any be assigned to him, will be content with hearing the substance of the charge without looking farther; and the court will hardly, of its own accord, think it a duty to examine the indictment to detect errors in it. Many hundreds, perhaps, are now in the state prison on erroneous indictments, who, however, have been fairly tried on the merits. But reverse the case, and suppose an acquittal to take place, the prosecutor, if he be dissatisfied and bent on conviction, has nothing to do but to tell the court that his own indictment was good for nothing; that it has no venue, or is deficient in other particulars, and that, therefore, he has a right to a second chance of convicting the prisoner, and so on, *toties quoties.*" 1 Johns. 74.

As to the two other defendants who secured a reversal of the conviction, this Court held that their plea of former jeopardy could not be maintained (pp. 671–672).

* * * because it is quite clear that a defendant, who procures a judgment against

> him upon an indictment to be set aside, may be tried anew upon the same indictment, or upon another indictment, for the same offence of which he had been convicted. * * *

See also *Kepner* v. *United States*, 195 U. S. 100, 126 *et seq.*

The analogy between the situation in the instant case and that in the *Ball* case seems to us amply sufficient to show that the Government would not be permitted to assert, if it attempted to try the petitioner upon another indictment for conspiring with any one of the conspirators named in the present indictment, that it was entitled to do so because of the variance disclosed by the proof here.

In affirming the judgment of conviction the Circuit Court of Appeals based its decision principally upon the ground that the variance was not fatal because the petitioner was not in anywise prejudiced by having Rice's case tried with his. It said (R. 516):

> * * * No doubt, strictly speaking, the evidence of Katz's trafficking with Rice was incompetent; but it was certainly harmless to Berger. Katz had to get the bills from someone unless he printed them himself; the fact that he got them from Rice gave no weight to his word; indeed, rather the contrary, because Rice was an added witness to his untruthfulness. His [Katz's] association with Rice, even if Rice was a proven

> counterfeiter, did not taint Berger. We can see nothing else of which Berger can complain; * * *.

The court accordingly held that the case was one falling within the amendment of February 26, 1919, to Section 269 of the Judicial Code (*infra*, p. 41), which directs appellate courts in both civil and criminal cases to "give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties."

If the court had desired to elaborate the point that Berger was not harmed because his case and Rice's were tried together, it could have pointed out that the strongest evidence against the petitioner was that given by Katz, and that Rice's testimony in no way corroborated Katz insofar as the latter's statements regarding the petitioner were concerned. Rice not only stated that he was not acquainted with the petitioner, but also swore that Katz had never mentioned Berger's name to him. Moreover, Rice repeatedly controverted the testimony given by Katz in other respects, denying that he ever had counterfeit money in his possession or had given any to Katz (R. 364), that he ever went to Brooklyn with Katz or had anything to do with the purchase of a ring from Mrs. Piccione (R. 383), that he had ever given Katz a share of the proceeds of the counterfeit currency (R. 383–384),

and so forth. A careful reading of the record discloses only a few instances in which Rice corroborated Katz's testimony in any respect: he admitted that he met Katz through Lee (R. 375), that Katz had been to his office (R. 367), that he had twice met Katz at Roth's Restaurant (R. 368) and that Lewis, the haberdasher, had accused him of giving him a counterfeit bill, although he denied that he had done so (R. 365–366). These, however, were relatively unimportant details, which it would have been difficult for Rice to deny, and which had no tendency to connect Berger with Rice or Katz. The burden of Rice's testimony was to the effect that Katz had told a mass of falsehoods and was a thoroughly unreliable witness. Thus Rice, as the court below observed (R. 516), was an added witness to Katz's untruthfulness, and his testimony tended to impeach the Government's most damaging evidence against the petitioner.

Admittedly, the evidence of Katz's dealings with Rice was incompetent as against the petitioner, but it can hardly have harmed him. Katz had confessed his own guilt, about which there was little room for doubt. Evidence regarding Katz's relations with Rice added no weight to the evidence tending to connect Katz with the petitioner.

We submit, therefore, that the mere fact that Rice and the petitioner were tried together, although it developed that they were not members of the same conspiracy, does not call for reversal of the conviction.

The decision below reflects the modern tendency on the part of courts and law-making bodies to liberalize the old technical rules of pleading and proof. Holdsworth in his *History of English Law*, Vol. IX, pp. 304–307, points out that under the mediaeval system when the pleadings were oral and the modern practice of summoning witnesses to testify to the facts was unknown, the doctrine of variance had no place in the law. That doctrine had its birth with the system of written pleadings. Under this system, as Holdsworth states, "The pleadings were closed and the issue was settled before the parties got into court; while the truth of the facts alleged in the pleadings was proved or disproved by the witnesses summoned to testify. Thus it might easily happen that the facts as proved did not support the facts as alleged in the pleadings—there was a variance. And a variance, however slight, might prove fatal to the success of the party who had all the substantial merits on his side." He then points out the arbitrary way in which the doctrine of variance operated, as explained by the Common Law Procedure Commissioners in 1830. He says for example, that if in an action for a false charge of felony, when the declaration stated that the defendant went before Richard Cavendish, Baron Waterpark of *Waterfork*, a Justice of the Peace, and falsely charged the plaintiff with the felony, and it appeared in evidence that the charge was made before Richard

Cavendish, Baron Waterpark of *Waterpark*, this variance was considered fatal, and the plaintiff was nonsuited.

Other similar examples are set out by Jones in his *Commentaries on Evidence*, 2d Edition, Vol. 2, Sec. 864, pp. 1572-1573. To meet this difficulty, the practice arose of stating the cause of action in the plaintiff's initial pleading in several different ways, in several distinct counts, in order to meet every contingency in the proof. This gave rise to a redundancy of pleading which had apparently never theretofore been paralleled, and while the device of multiple pleadings helped to some extent to counteract the extraordinary severity of the rules as to variance, it was not always successful, and Holdsworth states that, "In 1830 it was said that this doctrine was 'one of the most frequent sources of miscarriage in the suit.'"[5]

The harshness of the old rule has, however, been largely done away with in most jurisdictions by statutes making liberal provisions for amendments, thereby preventing, as Jones says (Sec. 867, p. 1577) "the injustice that flowed from technical enforcement of the old rule, under which parties were often nonsuited, or the real point at issue left un-

[5] In footnote 2 to this statement it is said: "This kind of objection [variance] is naturally looked out for by a party whose case has no foundations on the merits, and is consequently of very frequent occurrence; so that, notwithstanding the protection from it afforded by the use of several counts and pleas, it is one of the most frequent sources of miscarriage in the suit." Parlt. Papers 1830 xi 35.

determined and the parties excluded from all further remedy, because of zealous application of the variance rule without corresponding liberality in curative amendments." Jones further states (Sec. 867, p. 1577) that "A series of acts have been passed in England abrogating the old rules in both civil and criminal cases," and that "Similar statutes have been adopted throughout this country." See also Jones, Sec. 868, p. 1579.*

In line with such statutes are those which direct that errors and defects in the pleadings or other proceedings which do not affect the rights of the adverse party shall be disregarded. Jones states (Sec. 868, pp. 1579–1580) that "With scarcely a single dissent the authorities hold that these statutes should be liberally construed by the courts to further the ends of substantial justice," citing numerous cases. (Footnote 18 to Sec. 868, p. 1580.)

While there is a provision in the Federal statutes with reference to civil cases, permitting the

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* There is a historical discussion of the changes made by statute in the law of variance in both civil and criminal cases in England in a note to *Bristow* v. *Wright*, 1 Smith's Leading Cases, part 2, 8th Am. Ed., pp. 1417–1444. Reference is made in this note also to some of the American decisions. See also *Nash* v. *Towne*, 5 Wall. 689; note to *Stevenson* v. *Mudgett*, 34 Am. Dec. 155. See also *People* v. *White*, 22 Wend. 167, 175, where the subject of variance in indictments is examined. Smith says as to this case (p. 1444) that "*People* v. *White* was reversed by the Court of Errors, 24 Wend. 520, not because the general principle of variance laid down was wrong but because the application of it in that case was mistaken."

courts of the United States to allow amendments in the process or pleadings at any time upon such conditions as may be prescribed (R. S. Sec. 954, U. S. C., Title 28, Sec. 777), there is, of course, no such provision with respect to criminal proceedings because an indictment or presentment returned by a grand jury of the United States cannot be amended under the Constitution by an order of court. (*Ex parte Bain*, 121 U. S. 1.)

But substantially the same purpose is accomplished in criminal cases by the provision of the Act of February 26, 1919, amending Section 269 of the Judicial Code (Appendix, *infra*, p. 41), which directs that in criminal cases as well as in civil cases judgment shall be given "after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties." Designed to prevent the defeat of substantial justice, this statute like the statutes permitting curative amendments in civil cases should be given a liberal construction.

The petitioner has been convicted on proof amply sufficient to support the verdict. The technical error of which he complains did not affect his "substantial rights." Consequently, we submit, the decision below is sound and should be affirmed.

It must be conceded that other courts have regarded proof of two conspiracies as fatal when the indictment charged only one, irrespective of

whether substantial prejudice was apparent in the particular case. Certain of the decisions cited by the petitioner and by the court below disclose facts not present here which might well serve to distinguish them from the instant case. Others, however, are difficult, if not impossible, to differentiate.

In *Parnell* v. *United States* and *Hays* v. *United States,* 64 F. (2d) 324 (C. C. A. 10th) two conspiracies to violate the Prohibition Act were proved though only one, county-wide in scope, had been alleged. The evidence showed the existence of a county-wide conspiracy such as was described in the indictment, and Parnell was found to have been involved in it. The court, however, concluded upon a rehearing that there was not sufficient evidence to connect Hays with that conspiracy, although it appeared that he had conspired separately with Parnell. It accordingly reversed the judgment against Hays, while affirming the conviction of Parnell. The basis of the decision as to Hays appears to have been that the indictment charged a conspiracy to violate the prohibition laws in a particular manner, namely, with the connivance and assistance of the local law enforcement officers, whereas Hays was merely conspiring with Parnell to operate a still and knew nothing of the arrangements for protection. Thus the case was one in which the indictment described one conspiracy to the exclusion of the other instead of describing both, as in the present case. Acquittal of Hays on

the charge of conspiracy to violate the law in the particular manner specified would, we submit, have furnished no bar to a subsequent prosecution for conspiring with Parnell to operate the still, for the proof required to sustain the second charge would not include the element of connivance with officers of the law which was necessary to justify conviction under the first indictment. Hence the variance was properly held to be material.

Dowdy v. *United States* and *Funk* v. *United States,* 46 F. (2d) 417 (C. C. A. 4th), involved a closely analogous state of facts. There, however, the second conspiracy proved not only failed to come within the terms of the indictment, but was shown to have taken place in a State other than that in which the indictment was laid. It will be observed that in neither case was the proof of two conspiracies held to be a fatal variance in respect of the defendants who were shown to have been guilty of the offense described in the indictment.

In *Siebricht* v. *United States,* 59 F. (2d) 976 (C. C. A. 2d), as the court below observed, the evidence proved two entirely disconnected conspiracies, one of which was outlawed by the statute of limitations. Since the parties to both conspiracies were the same and the nature of the conspiracies similar, there was a danger that the jury might convict on the proof relating to the outlawed conspiracy, though the evidence as to the other offense were insufficient. Thus there was possibility of

serious prejudice which rendered the variance material. See *United States* v. *Baker*, 61 F. (2d) 469, 470 (C. C. A. 2d).

Terry v. *United States*, 7 F. (2d) 28 (C. C. A. 9th) is more like the instant case, but still we think it is not wholly analogous. There the indictment charged a conspiracy which was identified as having occurred at or near a certain place and at a specified time. Evidence was admitted, over objection, that two of the defendants had violated the liquor laws at a totally different place approximately six weeks earlier, and the court instructed the jury that they might consider that evidence as tending to prove the conspiracy charged and as showing that overt acts had been committed. This was held error on the ground that the two offenses were entirely different, and the court further observed that, "Proof that the plaintiff in error was guilty of another crime was in itself prejudicial * * *" (p. 30).

It would serve no useful purpose to examine the facts of all the other cases cited. Whether or not they disclose grounds for distinction, it is nevertheless true that the courts appear to have accepted the "absolute doctrine" which the court below declined to adopt. We submit that the reasoning of tl court below is to be preferred.

II

THE JURY WAS ENTITLED TO CONVICT THE PETITIONER UPON THE UNCORROBORATED TESTIMONY OF KATZ IF IT BELIEVED HIS TESTIMONY. THERE WAS, HOWEVER, CORROBORATION OF THAT TESTIMONY, AND ALTHOUGH NO REQUEST WAS MADE BY THE DEFENDANTS THE JURY WAS INSTRUCTED THAT IT SHOULD RELY UPON KATZ'S TESTIMONY ONLY IF IT FOUND IT TO BE CORROBORATED

The Government's principal witness against the petitioner was Katz. The petitioner contends that Katz's testimony was not corroborated and that he should not have been convicted upon this uncorroborated testimony because Katz was an ex-convict and his accomplice. While this point was not discussed in the opinion below (R. 513–516), and was not covered by the assignments of error appearing in the record (R. 491–499), we submit that it is without merit.

There can be no question that a convict is now a competent witness in a criminal trial in a Federal court. *Rosen* v. *United States*, 245 U. S. 467. See also *Funk* v. *United States*, 290 U. S. 371. While his prior conviction may be given due consideration by the jury in determining the credibility and weight of his testimony, the petitioner does not refer to any rule which requires the corroboration of the testimony of a convict, and we know of no such rule.

Even though he was an accomplice, the jury was clearly entitled to convict the petitioner on Katz's testimony alone if it believed him. In *Caminetti* v. *United States*, 242 U. S. 470, 495, this Court said:

> It is urged as a further ground of reversal of the judgments below that the trial court did not instruct the jury that the testimony of the two girls was that of accomplices, and to be received with great caution and believed only when corroborated by other testimony adduced in the case. We agree with the Circuit Court of Appeals that the requests in the form made should not have been given. In *Holmgren* v. *United States*, 217 U. S. 509, this court refused to reverse a judgment for failure to give an instruction of this general character, while saying that it was the better practice for courts to caution juries against too much reliance upon the testimony of accomplices and to require corroborating testimony before giving credence to such evidence. While this is so, there is no absolute rule of law preventing convictions on the testimony of accomplices if juries believe them. 1 Bishop's Criminal Procedure, 2nd ed., § 1081, and cases cited in the note.[1]

The record in the instant case shows that "no requests to charge were submitted to the Court in accordance with the rules." (R. 463.) Nevertheless, the court, in accordance with the practice suggested in the *Holmgren* and *Caminetti* cases, did charge the jury as follows (R. 473–474):

> You have here the evidence, when you get beyond the point of the passing of the money

[1] See also 2 Bishop's New Criminal Procedure, 2d ed., p. 994 and cases cited.

by Jones you have here the evidence of Katz. Katz concededly is a several-times-convicted offender against the law, a man who has been punished by penal servitude, a man who was a defendant in this action. I am going to speak of him now once and for all as far as that is concerned, and this applies to all his testimony as to all the defendants. He is a man who concededly is going to receive consideration for coming here and telling his story. The Government must find its witnesses where it may. It could hardly be expected that the inside story with reference to any aggregation engaged in the passing of counterfeit money would come from highly reputable citizens. Katz is here before you. Katz, if he is telling the truth, is an accomplice. Katz' testimony must be considered carefully in view of all the facts. The fact that Katz went to States Prison does not say that his testimony cannot be considered at all. Katz is not now on trial. He is here as a witness. The fact that he went to States Prison as a defendant convicted in a criminal case entitles you, and it is your duty in weighing his testimony, to determine whether you would give the same weight and credence to the testimony of a man who had been convicted of a crime that you would to a person who had lived a blameless life. Considering his testimony carefully because of his alleged association with this transaction and with the defendants, considering the fact that he is an ex-convict, what are the facts and circumstances proven

> by witnesses other than Katz? Do they corroborate, do they lend support to the truth of his story, or do they not? Taking the testimony of people who are not convicts or ex-convicts, taking the testimony of people who have no records, is there corroboration of Katz? That is for you to say. It is for you to determine if that testimony supports his story, shows to you that his story is in part true, from which you may go further and determine whether it is all true, or what part is true, or whether it is all false, or what part is false.

No exception was taken to this charge (R. 486–487), and we submit that it fully protected the petitioner.

While we contend that even though it be assumed that there was no corroboration of Katz's testimony the petitioner's conviction must stand, we think that the record discloses ample corroboration of such testimony. As the Circuit Court of Appeals pointed out (R. 513), Katz was "corroborated as to Berger by some admissions made after Berger's arrest, and to some extent by witnesses who had seen Berger in Jones's company before Jones passed the bills." To mention but one important point as to which Katz's testimony was fully corroborated: Katz testified that he was introduced to Jones by Berger in an apartment in New York City occupied by several girls (R. 112). Two Secret Service Agents, who worked on the case, testified unequivocally that each of them

heard Berger say that he had brought Jones to the girls' apartment and introduced him to Katz (R. 394–395; 406). Other instances in which Katz's testimony agreed in various particulars with that of other Government witnesses and also with the petitioner's own testimony will be found at R. 85, 88, 91, 103, 108, 154, 164, 166, 173, 236, 261, 363, 367.

While petitioner denied the testimony of Katz when he took the stand, he does not disclose any inconsistencies in that testimony which would tend to impair its credibility, and it should be remembered that in comparing the testimony of Katz and the petitioner the jury was confronted with the fact that the petitioner was also an ex-convict and that he had failed to reveal that fact in applications to obtain a pistol permit, a real estate brokerage license and to become a notary public (R. 233, 264–267, 269).

III

THE PETITIONER WAS NOT DEPRIVED OF A FAIR AND IMPARTIAL TRIAL BY THE CONDUCT OF THE ASSISTANT UNITED STATES ATTORNEY

The final contention of petitioner addresses itself to alleged misconduct on the part of the Assistant United States Attorney in examining witnesses and in his remarks to the jury. When the instances upon which petitioner relies are considered in their record setting, and not in isolation, coupled with the admonitions given by the trial court from time to time, and the following final

instruction to the jury, we think it clear that no possible prejudice is shown to have occurred (R. 471, 486):

> Let us start out with this proposition, that whatever counsel may have said to you was the evidence given by any witness, whatever I may say to you was the evidence given by any witness, is simply our recollection. That does not control you. It is your recollection of the evidence which has been given which is controlling. If there be any doubt in your mind as to the evidence of any witness on any point, you may have that read to you by the stenographer, if you shall require it.
>
> Gentlemen, before we go into a further discussion there was in the summation yesterday a little dispute between some of the counsel as to their personal relations. Let me say to you that has no place in this trial. Counsel are not on trial, and whether they like each other or dislike each other is a matter of absolutely no importance. We are not here determining any differences that they may have between each other. The people on trial here are the three defendants, and you will decide the case on the evidence that has been given here, not on any differences that there may be between counsel.
>
> * * * * *
>
> Gentlemen, without any sympathy, without any prejudice, without any bias, decide this case, * * *.

> Take the case and decide it as your oath requires you to do upon the evidence, upon the instructions of the Court, drawing from the evidence reasonable inferences which you have a right to draw, but determining the case on the evidence not on speculation.

The general rule is that juries are presumed to follow the instructions of the court, and the record here presents nothing to indicate that the jury in the case at bar disregarded those instructions. *Fairmount Glass Works* v. *Coal Co.*, 287 U. S. 474, 485; *Pennsylvania Co.* v. *Ray*, 102 U. S. 451, 459; *Parmagini* v. *United States*, 42 F. (2d) 721, 724 (C. C. A. 9th), certiorari denied, 283 U. S. 818.

Four judges below found that no prejudice ensued from the behavior of the Assistant United States Attorney, and we submit that the petitioner has not sustained the burden of establishing that he was deprived of a fair and impartial trial. See *Harris* v. *United States*, 71 F. (2d) 532 (App. D. C.), certiorari denied, October 8, 1934, under No. 209; *Salerno* v. *United States*, 61 F. (2d) 419 (C. C. A. 8th); *Caminetti and Diggs* v. *United States*, 220 Fed. 545, 555–557, affirmed, 242 U. S. 470; *Horowitz* v. *United States*, 262 Fed. 48, 51 (C. C. A. 2d), certiorari denied, 252 U. S. 586; *Silkworth* v. *United States*, 10 F. (2d) 711, 721 (C. C. A. 2d), certiorari denied, 271 U. S. 664: *Dunlop* v. *United States*, 165 U. S. 486, 498.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be affirmed.

J. CRAWFORD BIGGS,
Solicitor General.

JOSEPH B. KEENAN,
Assistant Attorney General.

JUSTIN MILLER,
Special Assistant to the Attorney General.

H. BRIAN HOLLAND,
W. MARVIN SMITH,
HARRY S. RIDGELY,
Attorneys.

FEBRUARY 1935.

APPENDIX

Section 37 of the Criminal Code (U. S. C., Title 18, Sec. 88) provides:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both.

Section 149 of the Criminal Code (U. S. C., Title 18, Sec. 263) provides:

> Whoever shall falsely make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be in imitation of, the circulating notes issued by any banking association now or hereafter authorized and acting under the laws of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish, any false, forged, or counterfeited note, purporting to be issued by any such association doing a banking business, knowing the same to be falsely made, forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering, any such circulating notes, or shall pass, utter, or publish, or at-

tempt to pass, utter, or publish as true, any falsely altered or spurious circulating note issued, or purporting to have been issued, by any such banking association, knowing the same to be falsely altered or spurious, shall be fined not more than $1,000 and imprisoned not more than fifteen years.

Section 151 of the Criminal Code (U. S. C., Title 18, Sec. 265) provides:

> Whoever, with intent to defraud, shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or shall bring into the United States or any place subject to the jurisdiction thereof, with intent to pass, publish, utter, or sell, or shall keep in possession or conceal with like intent, any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than $5,000 and imprisoned not more than fifteen years.

Section 269 of the Judicial Code as amended by the Act of February 26, 1919, c. 48, 40 Stat. 1181 (U. S. C., Title 28, Sec. 391) provides:

> * * * On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties.

R. S. Sec. 1025 (U. S. C., Title 18, Sec. 556) provides:

> No indictment found and presented by a grand jury in any district or other court of the United States shall be deemed insuffi-

cient, nor shall the trial, judgment, or other proceeding thereon be affected by reason of any defect or imperfection in matter of form only, which shall not tend to the prejudice of the defendant.

U. S. GOVERNMENT PRINTING OFFICE: 1939

CORRECTED COPY

SUPREME COURT OF THE UNITED STATES.

No. 544.—October Term, 1934.

Harry Berger, Petitioner, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 15, 1935.]

Mr. Justice Sutherland delivered the opinion of the Court.

Petitioner was indicted in a federal district court charged with having conspired with seven other persons named in the indictment to utter counterfeit notes purporting to be issued by designated federal reserve banks, with knowledge that they had been counterfeited. The indictment contained eight additional counts, alleging substantive offenses. Among the persons named in the indictment were Katz, Rice and Jones. Rice and Jones were convicted by the jury upon two of the substantive counts and the conspiracy count. Petitioner was convicted upon the conspiracy count only. Katz pleaded guilty to the conspiracy count, and testified for the government upon an arrangement that a *nolle prosequi* as to the substantive counts would be entered. It is not necessary now to refer to the evidence further than to say that it tended to establish not a single conspiracy as charged but two conspiracies—one between Rice and Katz and another between Berger, Jones and Katz. The only connecting link between the two was that Katz was in both conspiracies and the same counterfeit money had to do with both. There was no evidence that Berger was a party to the conspiracy between Rice and Katz. During the trial, the United States attorney who prosecuted the case for the government was guilty of misconduct, both in connection with his cross-examination of witnesses and in his argument to the jury, the particulars of which we consider at a later point in this opinion. At the conclusion of the evidence, Berger moved to dismiss the indictment as to the conspiracy count, on the ground that the evidence was insufficient to support the charge. That motion was denied. Petitioner, Rice, Katz and Jones were sentenced to terms of imprisonment.

The court of appeals, affirming the judgment, 73 F. (2d) 278, held that there was a variance between the allegations of the conspiracy count and the proof, but that it was not prejudicial; and that the conduct of the prosecuting attorney, although to be condemned, was not sufficiently grave to affect the fairness of the trial. We brought the case here on certiorari because of a conflict with other circuit courts of appeals in respect of the effect of the alleged variance. 293 U. S. —.

1. It is settled by the great weight of authority that although an indictment charges a conspiracy involving several persons and the proof establishes the conspiracy against some of them only, the variance is not material. But several circuit courts of appeals have held that if the indictment charges a single conspiracy, and the effect of the proof is to split the conspiracy into two, the variance is fatal. Thus it is said in *Telman* v. *United States*, 67 F. (2d) 716, 718: "Where one large conspiracy is charged, proof of different and disconnected smaller ones will not sustain a conviction." In support of that statement the various decisions upon which petitioner here relies are cited. This view, however, ignores the question of materiality; and should be so qualified as to make the result of the variance depend upon whether it has substantially injured the defendant.

In the present case, the objection is not that the allegations of the indictment do not describe the conspiracy of which petitioner was convicted, but, in effect, it is that the proof includes more. If the proof had been confined to that conspiracy, the variance, as we have seen, would not have been fatal. Does it become so because, in addition to proof of the conspiracy with which petitioner was connected, proof of a conspiracy with which he was not connected was also furnished and made the basis of a verdict against others?

Section 269 of the Judicial Code, as amended (28 U. S. C. § 391) provides:

"On the hearing of any appeal, certiorari, writ of error, or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, defects, or exceptions which do not affect the substantial rights of the parties."

The true inquiry, therefore, is not whether there has been a variance in proof, but whether there has been such a variance as to "affect the substantial rights" of the accused. The general rule

that allegations and proof must correspond is based upon the obvious requirements (1) that the accused shall be definitely informed as to the charges against him, so that he may be enabled to present his defense and not be taken by surprise by the evidence offered at the trial; and (2) that he may be protected against another prosecution for the same offense. *Bennett* v. *United States*, 227 U. S. 333, 338; *Harrison* v. *United States*, 200 Fed. 662, 673; *United States* v. *Wills*, 36 F. (2d) 855, 856-857. Cf. *Hagner* v. *United States*, 285 U. S. 427, 431-433.

Evidently Congress intended by the amendment to § 269 to put an end to the too rigid application, sometimes made, of the rule that error being shown, prejudice must be presumed; and to establish the more reasonable rule that if, upon an examination of the entire record, substantial prejudice does not appear, the error must be regarded as harmless. See *Haywood* v. *United States*, 268 Fed. 795, 798; *Rich* v. *United States*, 271 Fed. 566, 569-570.

The count in question here charges a conspiracy to utter false notes of one federal reserve bank each calling for $20, and those of another each calling for $100. The object of the utterance thus concerted is not stated; but the proof as to the conspiracies is that the one between Katz and Rice was with the purpose of uttering the false notes to buy rings from persons advertising them for sale, and the object of the other between Katz, Jones and Berger was to pass the notes to tradesmen. Suppose the indictment had charged these two conspiracies in separate counts in identical terms, except that, in addition, it had specifically set forth the contemplated object of passing the notes, naming Berger, Katz, Rice and Jones as the conspirators in each count. Suppose further that the proof had established both counts, connecting Berger with one but failing to connect him with the other, and thereupon he had been convicted of the former and acquitted of the latter. Plainly enough, his substantial rights would not have been affected. The situation supposed and that under consideration differ greatly in form; but do they differ in real substance? The proof here in respect of the conspiracy with which Berger was not connected may, as to him, be regarded as incompetent; but we are unable to find anything in the facts—which are fairly stated by the court below—or in the record from which it reasonably can be said that the proof operated to prejudice his case, or that it came as a surprise; and

certainly the fact that the proof disclosed two conspiracies instead of one, each within the words of the indictment, cannot prejudice his defense of former acquittal of the one or former conviction of the other, if he should again be prosecuted.

In *Washington & Georgetown R'd* v. *Hickey,* 166 U. S. 521, 531, this court said that "no variance ought ever to be regarded as material where the allegation and proof substantially correspond, or where the variance was not of a character which could have misled the defendant at the trial." This was said in a civil case, it is true, but it applies equally to a criminal case if there be added the further requisite that the variance be not such as to deprive the accused of his right to be protected against another prosecution for the same offense. See *Meyers* v. *United States,* 3 F. (2d) 379, 380; *Mansolilli* v. *United States,* 2 F. (2d) 42, 43.

We do not mean to say that a variance such as that here dealt with might not be material in a different case. We simply hold, following the view of the court below, that applying § 269 of the Judicial Code, as amended, to the circumstances of this case the variance was not prejudicial and hence not fatal.

2. That the United States prosecuting attorney overstepped the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense is clearly shown by the record. He was guilty of misstating the facts in his cross-examination of witnesses; of putting into the mouths of such witnesses things which they had not said; of suggesting by his questions that statements had been made to him personally out of court, in respect of which no proof was offered; of pretending to understand that a witness had said something which he had not said and persistently cross-examining the witness upon that basis; of assuming prejudicial facts not in evidence; of bullying and arguing with witnesses; and in general, of conducting himself in a thoroughly indecorous and improper manner. We reproduce in the margin* a few excerpts from the record, illus-

*[The defendant (petitioner) was on the stand; cross-examination by the United States attorney]:

"Q. The man who didn't have his pants on and was running around the apartment, he wasn't there?

"A. No, Mr. Singer. Mr. Godby told me about this, he told me, as long as you ask me about it, if you want it, I will tell you, he told me 'If you give this man's name out, I will give you the works.'

"Q. Give me the works?

"A. No, Mr. Godby told me that.

trating some of the various points of the foregoing summary. It is impossible, however, without reading the testimony at some length, and thereby obtaining a knowledge of the setting in which the objectionable matter occurred, to appreciate fully the extent of the misconduct. The trial judge, it is true, sustained objections to some of the questions, insinuations and misstatements, and instructed the jury to disregard them. But the situation was one which called for stern rebuke and repressive measures and, per-

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"Q. You are going to give me the works?

"A. Mr. Singer, you are a gentleman, I have got nothing against you. You are doing your duty.

"Mr. Wegman: You are not going to give Mr. Singer the works. Apparently Mr. Singer misunderstood you. Who made that statement?

"The Witness: Mr. Godby says that.

"Q. Wait a minute. Are you going to give me the works?

"A. Mr. Singer, you are absolutely a gentleman, in my opinion, you are doing your duty here.

"Q. Thank you very much. But I am only asking you are you going to give me the works?

"A. I do not give anybody such things, I never said it.

"Q. All right. Then do not make the statement.

"Mr. Wegman: The witness said that Mr. Godby said that.

"The Court: The jury heard what was said. It is not for you or me to interpret the testimony.

"Q. I asked you whether the man who was running around this apartment . . . , was he there in the Secret Service office on the morning that you were arrested?

"A. I didn't see him.

"Q. I wasn't in that apartment, was I?

"A. No, Mr. Singer.

"Q. I didn't pull the gun on you and stick you up against the wall?

"A. No.

"Q. I wasn't up in this apartment at any time, as far as you know, was I?

"A. As far as I know, you weren't.

"Q. You might have an idea that I may have been there?

"A. No, I should say not.

"Q. I just want to get that part of it straight.

. . .

"Q. Was I in that apartment that night?

"A. No, but Mr. Godby—

"Q. Was Mr. Godby in that apartment?

"A. No, but he has been there.

. . .

"Q. Do you include as those who may have been there the Court and all the jurymen and your own counsel?

"A. Mr. Singer, you ask me a question. May I answer it?

"Mr. Wegman: I object to the question.

"The Witness: Are you serious about that?

"The Court: I am not going to stop him because the question includes the Court. I will let him answer it.

"Mr. Singer: I would like to have an answer to it.

"The Witness: Mr. Singer, you asked me the question before—

"The Court: You answer this question.

haps, if these were not successful, for the granting of a mistrial. It is impossible to say that the evil influence upon the jury of these acts of misconduct was removed by such mild judicial action as was taken.

The prosecuting attorney's argument to the jury was undignified and intemperate, containing improper insinuations and assertions calculated to mislead the jury. A reading of the entire argument is necessary to an appreciation of these objectionable features. The following is an illustration: A witness by the name of Goldie Goldstein had been called by the prosecution to identify

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(Question repeated by the reporter.)

"A. I should say not; that is ridiculous.

. . .

"Q. Now Mr. Berger, do you remember yesterday when the court recessed for a few minutes and you sa me out in the hall; do you remember that?

"A. I do, Mr. Singer.

"Q. You talked to me out in the hall?

"A. I talked to you?

"Q. Yes.

"A. No.

"Q. You say you didn't say to me out in the hall yesterday, 'You wait until I take the stand and I will take care of you'? You didn't say that yesterday?

"A. No; I didn't, Mr. Singer; you are lying.

"Q. I am lying, you are right. You didn't say that at all?

"A. No.

"Q. You didn't speak to me out in the hall?

"A. I never did speak to you outside since this case started, except the day I was in your office, when you questioned me.

"Q. I said yesterday.

"A. No, Mr. Singer.

"Q. Do you mean that seriously?

"A. I said no.

"Q. That never happened?

"A. No, Mr. Singer, it did not.

"Q. You did not say that to me?

"A. I did not.

"Q. Of course, I have just made that up?

"A. What do you want me to answer you?

"Q. I want you to tell me I am lying, is that so? . . .

[No effort was later made to prove that any such statement had ever been made.]

. . .

"Q. Did she say she was going to meet me for anything except business purposes?

"A. No.

"Q. If she was to meet me?

"A. Just told me that you gave her your home telephone number and told her to call you up after nine o'clock in the evening if she found out anything about the case that you could help me with, that is what she told me.

"Q. Even if that is so, what is wrong about that, that you have been squawking about all morning."

the petitioner. She apparently had difficulty in doing so. The prosecuting attorney, in the course of his argument, said (italics added):

"Mrs. Goldie Goldstein takes the stand. She says she knows Jones, *and you can bet your bottom dollar she knew Berger.* She sto[illegible] right where I am now and looked at him and was afraid to go over there, and when I waved my arm everybody started to holler, 'Don't point at him.' You know the rules of law. Well, it is the most complicated game in the world. I was examining *a woman that I knew knew Berger and could identify him,* she was standing right here looking at him, and I couldn't say, 'Isn't that the man?' Now, imagine that! But that is the rules of the game, and I have to play within those rules."

The jury was thus invited to conclude that the witness Goldstein knew Berger well but pretended otherwise; and that this was within the personal knowledge of the prosecuting attorney.

Again, at another point in his argument, after suggesting that defendants' counsel had the advantage of being able to charge the district attorney with being unfair "of trying to twist a witness", he said:

"But, oh, they can twist the questions, . . . *they can sit up in their offices and devise ways to pass counterfeit money;* 'but don't let the Government touch me, that is unfair; please leave my client alone.'"

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

It is fair to say that the average jury, in a greater or less degree, has confidence that these obligations, which so plainly rest upon the prosecuting attorney, will be faithfully observed. Consequently, improper suggestions, insinuations and, especially, assertions of

personal knowledge are apt to carry much weight against the accused when they should properly carry none. The court below said that the case against Berger was not strong; and from a careful examination of the record we agree. Indeed, the case against Berger, who was convicted only of conspiracy and not of any substantive offense as were the other defendants, we think may properly be characterized as weak—depending, as it did, upon the testimony of Katz, an accomplice with a long criminal record.

In these circumstances prejudice to the cause of the accused is so highly probable that we are not justified in assuming its non-existence. If the case against Berger had been strong, or, as some courts have said, the evidence of his guilt "overwhelming", a different conclusion might be reached. Compare *Fitter* v. *United States,* 258 Fed. 567, 573; *Johnson* v. *United States,* 215 Fed. 679, 685; *People* v. *Malkin,* 250 N. Y. 185, 201-202; *State of Iowa* v. *Roscum,* 119 Iowa 330, 333. Moreover, we have not here a case where the misconduct of the prosecuting attorney was slight or confined to a single instance, but one where such misconduct was pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential. A new trial must be awarded. Compare *N. Y. Central R. R. Co.* v. *Johnson,* 279 U. S. 310, 316-318.

The views we have expressed find support in many decisions, among which the following are good examples: *People* v. *Malkin, supra; People* v. *Esposito,* 224 N. Y. 370, 375-377; *Johnson* v. *United States, supra; Cook* v. *Commonwealth,* 86 Ky. 663, 665-667; *Gale* v. *People,* 26 Mich. 157; *People* v. *Wells,* 100 Cal. 459. The case last cited is especially apposite.

Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.